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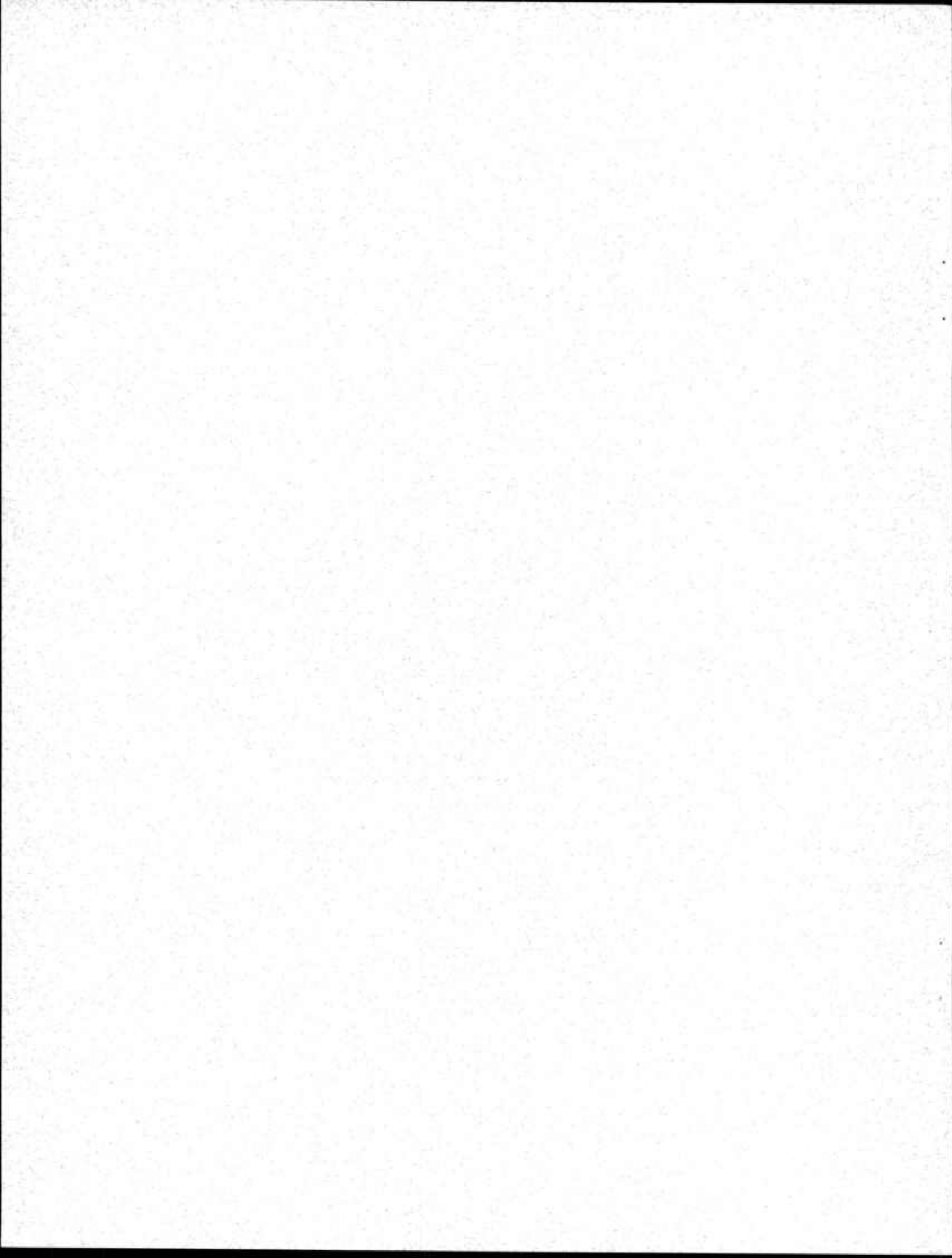
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# **REPORT OF THE TASK FORCE TO EXAMINE LIABILITY INSURANCE ON RENTAL VEHICLES**



**ANNAPOLIS, MARYLAND**

**December 1996**



**REPORT OF THE  
TASK FORCE TO EXAMINE  
LIABILITY INSURANCE ON RENTAL VEHICLES**



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**GENERAL ASSEMBLY OF MARYLAND**  
**ANNAPOLIS, MARYLAND 21401**

**February 28, 1997**

**The Honorable Parris N. Glendening, Governor**  
**The Honorable Thomas V. Mike Miller, Jr., President of the Senate**  
**The Honorable Casper R. Taylor, Jr., Speaker of Delegates**  
**Honorable Members of the Senate Finance Committee**  
**Honorable Members of House Economic Matters Committee**

**Ladies and Gentlemen:**

The Task Force to Examine Liability Insurance on Rental Vehicles was established pursuant to Senate Bill 604 of 1996. The legislation set forth the purpose and responsibilities of the task force as follows: (1) review the liability insurance issues, including primary coverage, involved in the rental of motor vehicles in this State; and (2) develop recommendations for methods to reduce costs to consumers of the automobile insurance industry and the rental vehicle industry with respect to duplicative insurance coverages provided on rental vehicles, to reduce the confusion to consumers related to the insurance issues involved in rental vehicle transactions, and to reduce costs to consumers of rental vehicles or the use of loan cars.

The seven-member task force met two times with presentations by the rental car industry and the insurance industry. Some of the issues discussed included: primary vs. secondary liability comprehensive insurance coverage, unauthorized drivers (permissive use), collision insurance coverage, and personal injury protection.

Under Maryland law, the owner of a vehicle is responsible to obtain the minimum required insurance coverage on the vehicle. Accordingly, rental car companies are required to provide the minimum required insurance on their vehicles; they are considered "primary", except in the case of replacement vehicle when they are considered "excess" or "secondary". The rental car companies would like to see the law changed so that the renter's insurance company, rather than the rental car owner or its insurer, would be responsible for the minimum required insurance coverage.

The task force considered the five proposals listed below. The task force was divided on all of the proposals except for Proposal C. Generally, the members supported Proposal C.

***Proposal A:*** Shift entirely the responsibility for liability coverage from the owner of the rental car to the renter (under private passenger insurance)

***Proposal B:*** Allow liability coverage by the rental car company to cover only authorized permissive drivers (under private passenger insurance)

***Proposal C:*** Extend the waiver of PIP allowed for private passenger vehicles to rental cars (under private passenger insurance)

***Proposal D:*** Shift the responsibility for uninsured motorist coverage from the owner of the rental car to the renter (under private passenger insurance)

***Proposal E:*** Allow liability coverage (under commercial insurance) to be negotiated between a rental car company and a business renting vehicles

In deliberating the issues, the task force found that it was unable to make recommendations for changes to the current law given the limited time and information presented at the two meetings. Generally, the task force agreed that further study of the issues is necessary. Further information on the assessment of a change in the law is needed from the Maryland Insurance Administration (MIA), the Motor Vehicle Administration (MVA), and other industry experts.

In light of the bills pending before the 1997 session, the task force presents its findings to the General Assembly. The task force hopes that the findings presented in this report will assist the General Assembly in its discussions of the issues surrounding automobile insurance on rental vehicles. The task force expresses its appreciation for the advice and assistance provided by governmental officials and members of the public.

Respectively submitted,

Michael Wagner  
Chairman

MW/TDB/msh

# **Task Force to Examine Liability Insurance on Rental Vehicles**

## **1996 Interim Roster**

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Mr. Michael Wagner, Chairman and Member at Large

Senator John Astle, representing the Senate of Maryland

Delegate Charles McClenahan, representing the House of Delegates

Ms. Jean Bienemann, Maryland Insurance Administration

Mr. Paul Cheek, GEICO, representing the Insurance Industry

Mr. Michael DeLorenzo, Budget Rental Car, local Maryland Rental Car Operator

Mr. Ronald Freeland, Motor Vehicle Administration

Mr. Clyde Law, State Farm Insurance, representing the Insurance Industry

Mr. Robert Muhs, AVIS, representing the Maryland Rental Car Coalition

### **Staff**

Ms. Tami Burt

Mr. Enrique Martinez-Vidal





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## **Report of the Task Force to Examine Liability Insurance on Rental Vehicles**

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As automobile insurance costs have increased, the rental car industry raised concerns about Maryland's current automobile insurance law which requires the owner of a vehicle to secure the minimum required insurance coverage on the vehicle. Accordingly, rental car companies are responsible for the minimum required insurance of their rental cars, except in the case of replacement vehicles. Rental car companies would like to change the law so that the renter's insurance carrier, rather than the rental car owner or its insurer, would be responsible (as primary) for the minimum required insurance coverage. Rental car companies do not seek to be relieved of the required security provisions, but rather when there are multiple sources of valid insurance available, they would like to be secondary.

Accordingly, the General Assembly commissioned a task force to review the issues surrounding rental car insurance. The legislation set forth the purpose and responsibilities of the task force as follows:

- review the liability insurance issues, including primary coverage, involved in the rental of motor vehicles in this State; and
- develop recommendations for methods to reduce costs to consumers of the automobile insurance industry and the rental vehicle industry with respect to duplicative insurance coverages provided on rental vehicles, to reduce the confusion to consumers related to the insurance issues involved in rental vehicle transactions, and to reduce costs to consumers of rental vehicles or the use of loan cars.

The Task Force to Examine Liability Insurance on Rental Vehicles was established pursuant to Chapter 673 (Senate Bill 604) of the Acts of the General Assembly of 1996. *(See Appendix I for a copy of the legislation and Appendix II for a copy of the letter from the President of the Senate and the Speaker of the House of Delegates appointing the members.)* The members of the task force appointed on November 19, 1996 were: Michael J. Wagner (Chairman and Member at Large); Honorable John C. Astle (representing the Senate of Maryland); Honorable Charles A. McClenahan (representing the Maryland House of Delegates); Jean Bienemann (representing the Maryland Insurance Administration); Ronald L. Freeland (representing the Motor Vehicle Administration); Robert Muhs (from AVIS and representing the Maryland Rental Car Coalition); Michael DeLorenzo (from Budget Rental Car -- a local Maryland rental car operator); Clyde Law (from State Farm and representing the insurance industry); and Paul Cheek (from GEICO and representing

the insurance industry). Committee staff included: Tami Burt from the Department of Fiscal Services (Senate Finance Committee) and Enrique Martinez-Vidal from the Department of Legislative Reference (House Economic Matters Committee).

The task force met two times with presentations by the rental car industry and the insurance industry. Some of the issues discussed on December 3 and 10, 1996, included: primary vs. secondary liability comprehensive insurance coverage, unauthorized drivers (permissive use), collision insurance coverage and the collision damage waiver, personal injury protection, uninsured coverage, and negotiations with business renters. (*See Appendix III for the minutes of the meetings.*) The task force also received correspondence from the rental car industry and insurance industry relating to several of these issues.

In deliberating the issues at the second meeting, the task force members generally expressed the need for further study since they were given limited time and information. Many members stated that further information on the assessment of a change in the law is needed from the Maryland Insurance Administration (MIA), the Motor Vehicle Administration (MVA), and other industry experts.

A draft report was distributed to the members for comments in January 1997. The report outlined five proposals for the members to consider. The task force was divided on all of the proposals except for Proposal C. Generally, the members supported Proposal C. The proposals are listed below. (*See Appendix IV for the members' comments.*)

***Proposal A:*** Shift entirely the responsibility for liability coverage from the owner of the rental car to the renter (under private passenger insurance)

***Proposal B:*** Allow liability coverage by the rental car company to cover only authorized permissive drivers (under private passenger insurance)

***Proposal C:*** Extend the waiver of PIP allowed for private passenger vehicles to rental cars (under private passenger insurance)

***Proposal D:*** Shift the responsibility for uninsured motorist coverage from the owner of the rental car to the renter (under private passenger insurance)

***Proposal E:*** Allow liability coverage (under commercial insurance) to be negotiated between a rental car company and a business renting vehicles

**Section I** of the report summarizes Maryland's current automobile insurance law and its relation to rental vehicles.

**Section II** summarizes the five rental car industry proposals discussed at the task force meeting and through correspondence. The rationale provided by the rental car industry and responses provided by the insurance industry are included under each proposal.

**Section III** summarizes two proposals suggested by the insurance industry through their comments.

## I. Maryland's Current Automobile Insurance Law

### Types of Automobile Insurance

The compulsory insurance law in Maryland requires every vehicle to be covered by insurance. Required insurance includes: liability, personal injury protection (except a portion of which can be waived), and uninsured motorist coverage. Optional insurance includes: collision and comprehensive coverages.

- **Liability Coverage:** Sections 17-103 and 17-104 of the Transportation Article prohibit the MVA from issuing or transferring the registration of a motor vehicle unless the owner furnishes evidence of the required minimum security. The minimum security includes \$20,000 (one person) and \$40,000 (occurrence) for bodily injury to persons injured in accident; and \$10,000 for property damage to other vehicles and property. Liability coverage protects the owner of the vehicle against injury and property damages suffered by other people who are hurt by or because of the owner's car. The insurance company of the owner of the vehicle is required to defend the owner against such claims.
- **Personal Injury Protection (PIP):** Section 539 of the Insurance Code (Article 48A) requires insurance companies to provide \$2,500 for medical, hospital, and disability benefits under an automobile insurance policy. This insurance is provided to those injured in an accident regardless of fault. It is provided to the first named insured, the first named insured's family members, other persons injured while occupying the insured vehicle, and pedestrians injured in an accident in which the insured vehicle is involved. A first named insured may waive PIP for himself/herself, listed drivers, and other members of the first named insured's family residing in that household who are 16 years or older; however, if the first named insured waives PIP on his/her own insurance policy, the person effectively waives PIP while riding in other private passenger vehicles. Policies issued to insure taxicabs and bus companies are exempt from the PIP provisions under Section 539(e) of the Insurance Code and Sections 11-105 and 11-165 under the Transportation Article.
- **Uninsured Motorist Coverage:** Section 541 of the Insurance Code (Article 48A) describes coverage which is provided to persons injured in an accident caused by a vehicle that is uninsured or underinsured. The minimum required coverage that must be secured under an automobile policy is \$20,000 (one person) and \$40,000 (occurrence) for bodily injury to anyone injured in accident and \$10,000 for property damage. Uninsured motorist coverage is provided by the vehicle owner's insurance. This required coverage protects the owner and those riding in the owner's car against bodily injuries caused by a negligent driver of an uninsured vehicle or hit-and-run motorist.

- **Collision Coverage:** Section 541(d) of the Insurance Code (Article 48A) and Section 14-2101 of the Commercial Law Article describe optional collision coverage as insurance without regard to fault against accidental property damage to the insured motor vehicle caused by physical contact of the insured vehicle with another vehicle. Whenever a private passenger auto insurance policy includes collision coverage, the coverage automatically includes any passenger car that is rented by an insured for a period of 30 days or less under a rental agreement. A collision damage waiver (CDW) is when, as part of the rental agreement, the lessor (rental vehicle owner) agrees, for a charge, to waive all or part of any claims against the lessee (person renting the vehicle) for damages to the rental motor vehicle during the term of the rental agreement. The CDW is not considered insurance and, therefore, is not regulated by the Maryland Insurance Administration.

An insurer of the owner of the vehicle may not deny coverage to an insured for collision damage to a rental vehicle because the accident involved an uninsured motorist or the identity of the motor vehicle causing the damage cannot be ascertained. An insurer may offer to its insured optional coverage for damages incurred by the insured as the result of the loss of use of a rental vehicle that sustains collision damage while rented by the insured.

- **Comprehensive Coverage:** This optional coverage pays the owner of the vehicle for damages to the owner's car for most non-accident causes, including theft, vandalism and many natural calamities.

## Rental Car Industry

The Maryland rental car activity is nearly \$200 million per year. According to the Maryland Rental Car Coalition, about 50 percent of car rentals are at the airport; about 30 percent are for replacement vehicles (these are primarily Marylanders); about 15 percent are for commercial vehicles (these are primarily Marylanders or Maryland based companies); and about 5 percent are for discretionary purposes (vacations, leisure trips, special occasions). About 90 percent of the 50 percent airport renters are from out-of-state (therefore 45 percent of all renters are out-of-state).

Maryland law requires rental car companies to provide primary coverage to the renter. Rental car companies may opt to provide secondary coverage only in the case of certain temporary substitute vehicles. About 20 percent of the rental car companies purchase a liability policy through an insurance company for their rental cars, while the remaining 80 percent of the companies are self-insured. For those companies that purchase insurance, the company is rated by territory and experience.

- ***Replacement Vehicles:*** Under current law (Chapter 673 of 1996), if an auto repair facility or dealer temporarily loans out a vehicle (for a zero or nominal fee) to a person who is unable to drive their own car (it is in a repair shop or is destroyed), then the person using the loaned vehicle is responsible for the primary insurance coverage through the person's personal automobile policy. The owner of a vehicle to be temporarily loaned may only maintain insurance which is "excess" to the policy held by the person using the vehicle. This was the customary practice for most insurance companies (except for the Maryland Automobile Insurance Fund) prior to the passage of the bill.
- ***Other States:*** If an out-of-state resident rents a car in Maryland, Maryland's insurance law applies. Maryland law requires rental car companies to cover out-of-state drivers. In states like Florida where the insurance follows the driver and not the vehicle, when an individual rents a car, the name of the insurance agent and/or policy number is required. The rental car company provides any additional protection.
- ***Unauthorized Drivers:*** Under current law, the required insurance must cover the owner of the vehicle and each person driving or using the vehicle with the permission of the owner or lessee. Also, Section 18-106 of the Transportation Article provides that, if a person rents a motor vehicle under an agreement not to permit another person to drive the vehicle, the person may not permit any other person to drive the rented motor vehicle. Case law provides that a rental car company is still responsible for insurance coverage if an unauthorized driver drives the rented vehicle. (Advice from the Attorney General provides that violation is a misdemeanor punishable by a fine of up to \$500 and imprisonment for up to two months -- the lessor could seek to enforce the contract provision by suing the lessee for breach of contract to recover monies paid as a result of an accident caused by an unauthorized driver.)

The following table illustrates situations relating to rental vehicles and indicates which party is responsible for insurance under current law.



**Rental Car Situations**  
**Party Responsible for Insurance - Under Current Law**

Type of Coverage	Rental Car Situation	Party Responsible for Insurance on Rental Car Under Current Law
<b>Liability Coverage (1)</b> <b>under Private Passenger</b>	Long Term Lease (over 180 days)	Renter of the Rental Car
	Short Term Rental (Includes Maryland Rental by Out-of-State Resident) <b>See Proposal A</b>	Owner of the Rental Car
	Unauthorized Non-Permissive Person Drives Rental <b>See Proposal B</b>	Owner of the Rental Car
	Use of Rental as Temporary Replacement	Renter of the Rental Car
<b>Collision Coverage (2)</b> <b>under Private Passenger</b>	Short Term Rental (up to 30 days)	-Renter of the Rental Car, if the Renter has Collision on Own Vehicle (Owner of the Rental Car is then excess) -Owner of the Rental Car, if the Renter Doesn't Have Collision on Own Vehicle & Renter Accepts CDW
<b>Comprehensive (3)</b> <b>under Private Passenger</b>	Short Term Rental (up to 30 days)	Law is silent
<b>PIP Coverage (4)</b> <b>under Private Passenger</b>	Short Term Rental <b>See Proposal C</b>	Owner of the Rental Car (regardless of Whether Renter has Waived PIP under own Policy)
<b>Uninsured Coverage (5)</b> <b>under Private Passenger</b>	Short Term Rental <b>See Proposal D</b>	Owner of the Rental Car
<b>Commercial Policy</b>	Short Term Rental <b>See Proposal E</b>	Owner of the Rental Car (regardless of whether the business negotiates with the owner of the rental car)

(1) Renter or other person driving rental vehicle causes bodily injury to those in accident and/or property damage to other vehicles.

(2) Renter causes property damage to rental vehicle. (not mandatory coverage)

(3) While renter has rental vehicle, there is non-accident damages to vehicle. (not mandatory coverage)

(4) No-fault for bodily injury.

(5) Uninsured other driver causes bodily injury to those in rental vehicle and/or property damage to rental vehicle.

## **II. Proposals by the Rental Car Industry With Responses by the Insurance Industry**

### **Proposal A: Shift Entirely the Responsibility for Liability Coverage from the Owner of the Rental Car to the Renter (Under Private Passenger Insurance)**

The rental car industry proposes that the owner/lessor of a motor vehicle that is leased from a period of 180 days or less shall maintain the minimum required security on all vehicles registered in the State but the lessee's (or authorized operator's) insurance, if any is valid and collectible, shall be primary and the security maintained by the lessor shall be secondary up to the minimum levels required by law. (Primary is the insurance company to where the injured party goes first for benefits. Secondary is the insurance company to where the injured party goes only if the primary carrier has exhausted the limits.)

#### **Rationale Provided by Rental Car Companies:**

- Continues what the General Assembly passed with collision coverage in 1989. Marylanders are already paying for collision coverage for potentially rented cars in their policy. Since insurance companies have to factor for potential claims for rental cars when an individual purchases collision on his/her own car, some piece of the premium must be attributable to collision protection for rental cars.
- Continues to ensure that every rental car is insured (no injured third parties will be left without adequate remedies) since the rental car company owner would cover excess up to the minimum and would provide primary protection in those instances where the renter has no valid or collectible insurance.
- Makes the insurance company of the driver responsible since the driver's insurance company has the ability to review the experience of the driver. Also, the insurance company has the ability to increase premium costs and place surcharges on risky drivers. The risk to the rental car company is that the experience of the driver is unknown. On a \$20 to \$30 rental and in a 4 minute transaction, driving records are not checked.
- Expands what Maryland insurance companies currently cover when a Maryland policyholder rents in Florida, Georgia, and five other states where the insurance follows the driver and not the vehicle. If a Marylander rents in Florida, the renter's insurance company is primary.

- Takes the rental car company out of the business of providing insurance. The highest risk for the rental car industry is that it does not have the ability to determine if those renting cars are risky drivers.
- Reduces confusion for consumers by making rental car companies secondary for required security in the same manner as collision coverage and temporary replacement vehicles.
- Increases driver responsibility and accountability since the driver is responsible for insurance.
- Reduces costs to the rental industry, making Maryland companies more competitive and allowing rental car operators to locate or expand in more risky, urban areas. Any potential decrease in rates from the proposal would be in response to the free market.
- Exports insurance losses out of Maryland as the other states' carriers become primary. If an out-of-state resident rents in Maryland, the renter's out-of-state insurance company would be primary.
- Expands what businesses already cover for their employees in their policies in states like Florida where the insurance follows the driver. Under current law, if an out-of-state employee of IBM rents in Maryland on a business trip, the Maryland rental car company covers. But IBM has a policy which would cover its employees in states such as Florida, where the renter's insurance is primary. Therefore, corporations doing business in Maryland already have the ability to pay in other states.
- Impacts Maryland insureds minimally. The maximum amount of losses which would be shifted to Maryland insureds is \$4.2 million, or .5 percent of all losses. This amount assumes that: (1) rental company losses resulting from the required coverage is \$20 million statewide (10 percent of total \$200 million rental revenues); (2) 47 percent of this amount (\$9.4 million) would be shifted to out-of-state insurance companies whose insureds caused the accidents; (3) the remaining 53 percent of losses (\$10.6 million) would shift to Maryland insurance companies for Maryland insureds that caused the accidents; and (4) however, of the \$10.6 million, already \$6.4 million is paid by Maryland insurance companies because of Senate Bill 604 (1996) and prior insurance coverage governing temporary replacement rentals. A portion of these additional losses will be business related and, therefore, borne by businesses with commercial liability policies.

The insurance industry opposes this proposal. Responses provided by Insurance Companies:

- Shifts the cost burden of the rental car companies to the private passenger insurance companies for the insurance payment on rented vehicles. Under current law, insurance coverage is priced according to the vehicle and territory, as well as the driver's experience. It violates a time-proven principle in insurance underwriting; insurance follows the vehicle.
- Makes it difficult for the insurance company to price the risk because it is unknown who and how often a policy holder will rent (also, it is unknown what type of vehicle they will rent and where they will go). Currently, about 20 percent of the rental car companies obtain insurance from a carrier. These carriers should be aware of the claim history of rental cars. The rental car companies or their insurers have the data on rental accident claims since it is a legitimate business risk and expense.
- Makes the premiums for liability insurance difficult to set, as seen with collision coverage on rented vehicles. If an individual has collision on his/her own personal vehicle, then this coverage passes on to any vehicle that the individual rents. Insurance companies have a difficult time predicting the exposure of rental vehicles (insurance companies do not have a special rating provision for collision coverage on rental vehicles by an individual insured/renter) and, therefore, it is difficult setting rates for collision coverage.
- Goes against the policy in most states. Only about seven states, including Florida, Georgia, Indiana, Oklahoma, New York, Tennessee, have a statute where the renter is primary.
- Increases statewide insurance rates for all Maryland drivers due to increased claim payments, administrative, and legal costs. Currently, these claim payments and costs are absorbed by the car rental industry as a cost of doing business which is passed along to its customers. A person who rents a car should pay the entire cost of renting including insurance.
- Forces Maryland drivers who do not or cannot afford to rent cars to subsidize the cost of claims for those who do rent cars.
- Makes one premium cover the risk for the use of multiple vehicles. A person may rent a car that is not replacing the insured car which may be used by other family members.

- Goes against competitive rating legislation enacted in 1996 and aimed at decreasing rates for Maryland residents.
- Makes it difficult to determine the impact, even though there is no question that there would be a shift in cost. Estimates of cost shifts proposed by the Rental Car Coalition were made with a major assumption and with no backup data from industry experts like Universal Underwriters.

**Proposal B: Allow Liability Coverage by the Rental Car Company To Cover Only Authorized Permissive Drivers (Under Private Passenger Insurance)**

The rental car company industry proposes that the owner/lessor's minimum required security shall cover the owner of the vehicle and each person driving or using the vehicle with the permission of the owner/lessor. If an unauthorized non-permissive driver causes an accident, the rental car companies propose that the unauthorized driver's insurance, if any, should cover the claims. If the unauthorized driver has inadequate insurance, then the renter giving permission to that individual should be responsible (just as if the renter allowed the unauthorized driver to use the renter's own vehicle).

**Rationale Provided by Rental Car Companies:**

- Enforces the section of current law which allows a rental car company to contract with a renter as to who is authorized to drive the rental car. Another section of current law, however, does not prevent insurance coverage by the rental car company for unauthorized drivers. The rental car company is held accountable even though they tried to prevent the use of the rental vehicle by an unauthorized driver.
- Makes it similar to the situation where valet parking attendants, car wash personnel, service repair technicians, and other extraordinary drivers are covered under commercial liability policies and coverage by rental companies is not necessary.
- Addresses a court case (*Enterprise Leasing Company v. Allstate Insurance Company*). The situation occurred where the rental company told a lessee that no one else was to drive the rented vehicle. The lessee let her 25-year-old son drive the car and he had an accident. The rental company said it should not have to pay to repair the vehicle because the lessee let an unauthorized person drive the car. The court ruled that the rental company is responsible for the

insurance on the vehicle per current law, regardless of the rental agreement which may disallow certain drivers.

- Makes the renter less likely to allow an unauthorized person drive the rented vehicle. The renter's insurance carrier would have the option to increase the renter's premiums because the renter allowed another person to drive the vehicle without the owner's knowledge.
- May help to prevent unauthorized drivers from being on the road since many are persons who would not qualify to rent a vehicle. Another person may rent the vehicle for the unauthorized driver knowing that person would not be allowed to rent or drive a rental vehicle.
- Assists the rental car companies because in legal actions against unauthorized drivers, an extremely small percentage end up make restitution. The renter and unauthorized driver can then rent another vehicle and repeat the same offense.

The insurance industry opposes this proposal. Responses Provided by Insurance Companies:

- Circumvents the compulsory liability law by allowing an exception for a rental car company who has a renter violate a contract with the rental car company by permitting an unauthorized and unknown operator drive the rental car. Other commercial enterprises could claim the same exception by not being responsible for the insurance of a company car when the employee let an unauthorized operator or nonemployee utilize the car for personal or other business use.
- Does not make it similar to the situation of valet parking attendants, car wash personnel, service repair technicians, and other extraordinary drivers since these drivers have an implied or specific authorization to use the vehicle and gain a monetary benefit (in furtherance of their business pursuits) by the use of the car. Rental cars are used for many purposes, including pleasure.
- Shifts the cost burden of the rental car companies to the private passenger insurance companies for the insurance payment of a rented vehicle driven by an unauthorized driver. This risk to the insurance company would be impossible to rate and underwrite since the insurance company would not know the rental usage of a policyholder, the type of vehicle a policyholder would rent, and whether the policyholder would allow an unauthorized driver to drive the vehicle as well. Insurers would have to spread the cost to all policyholders, forcing insureds that do not rent and those that rent but do not allow unauthorized drivers to subsidize the risk.

- Does not address the real problem of unauthorized drivers which is misrepresentation or fraud and breach of contract. Rental car companies need tighter contractual language and prominent disclosure of contractual damages for breach of contract by unauthorized use. Then the rental car companies can file an action against the renter.
- Confuses an innocent third party who may be unsure as to who is responsible for payment of claims. Under the proposal, the unauthorized driver's insurance or the renter could be responsible; the rental car company could be responsible as the "excess" provider. It is also unclear if the proposal pertains to collision coverage, as well as liability comprehensive coverage. The rental car companies are in the business of renting vehicles and should cover the risk of loss to the vehicle. An innocent third party should be able to look to the rental car company to obtain coverage for any damage.

**Proposal C: Extend the Waiver of PIP Allowed for Private Passenger Vehicles to Rental Cars (Under Private Passenger Insurance)**

The rental car company industry proposes that, if an individual waives PIP on his/her own policy, that person should be prohibited from obtaining the benefits when driving a rented vehicle. Under current law, if a driver who caused the accident in a rental car had waived PIP under his/her policy, the driver could still collect under the rental car company's policy -- even though that person could not collect if he/she were driving in another private passenger vehicle.

**Rationale Provided by Rental Car Companies:**

- Makes it consistent with the law which provides that an individual who waives PIP on his/her insurance policy effectively waives PIP while riding in other private passenger vehicles.
- Eliminates duplication of coverage since the renter may already be paying on his/her own policy for PIP coverage (unless they elected to waive it).
- Makes the policy consistent with other transportation companies since taxicabs and buses are not required to secure PIP coverage.
- Would allow rental car companies rates to decrease since PIP coverage is now included as a factor in rental rates.
- Eliminates the problem that rental car companies have no recourse for PIP coverage from any sources, such as health coverage, workers' compensation,

or the responsible third party. PIP is a no-fault coverage and is provided regardless of other types of coverages.

- Eliminates the open invitation for unethical claimants to pursue PIP claims. By removing PIP, the profit motive in an accident is eliminated. Often PIP is collected in addition to the recovery of the same dollars from a third party claim, a medical insurer, or workers' compensation.

The insurance industry concurs with this proposal. Response Provided by Insurance Companies:

- Does not create a subsidy or a loss shift since the waiver currently exists on the renter's personal policy.
- Makes it consistent with how PIP was established for individual protection. That is, PIP coverage is the one coverage which follows the individual.

**Proposal D: Shift the Responsibility for Uninsured Motorist Coverage from the Owner of the Rental Car to the Renter (Under Private Passenger Insurance)**

The rental car industry proposes that the renter's insurance be responsible for the uninsured motorist coverage. Under current law, since the owner of the vehicle is responsible for uninsured motorist coverage, when a rented vehicle is involved in an uninsured motorist accident, the burden of the bodily injury to persons and property loss to the rental vehicle is placed on the rental car company. In these situations, the renter supposedly did not cause the accident; instead, the accident was caused by the other party who was either an uninsured party or an unidentifiable party. Under the proposal, the renter would be responsible for the deductible of the uninsured motorist coverage since the renter's insurance would be responsible for the coverage.

Rationale Provided by Rental Car Companies:

- Would be consistent with the law relating to collision damage where the renter's insurance is responsible if the renter causes damage to the rented vehicle. Under law, an insurer may not deny coverage to an insured for collision damage to a rental vehicle because the accident involved an uninsured motorist or the identity of the motor vehicle causing the damage cannot be ascertained.
- May reduce the situations where the renter claims that property damages and bodily injuries were caused by a phantom vehicle. Since there are no third



party verification, these claims are highly susceptible to fraud. Examples of fraudulent claims include: the intoxicated driver who damages the rented vehicle, leaves the scene, and later claims that an unknown party struck his/her vehicle while parked; or the careless/negligent driver who claims an unknown vehicle ran him/her off the road so his/her collision coverage would not have to pay for damages.

- Makes it consistent with taxi cabs and buses which are exempt from uninsured motorist coverages because they are in the transportation business.
- Eliminates the problem that the rental car companies have in not being able to track or monitor the number of claims presented by individuals that abuse uninsured motorist coverage. Insurance companies have the ability to monitor the losses through their underwriting.

The insurance industry opposes this proposal. Responses Provided by Insurance Companies:

- Shifts the cost burden of the rental car companies to the private passenger insurance companies for the insurance payment of uninsured motorist coverage on rented vehicles. Under current law, insurance coverage is priced according to the vehicle and territory, as well as the driver's experience.
- Makes it difficult for the insurance company to price the risk because it is unknown who and how often a policy holder will rent (also, it is unknown what type of vehicle they will rent and where they will go). Currently, about 20 percent of the rental car companies obtain insurance from a carrier. These carriers should be aware of the claim history of rental cars and how often their uninsured motorist coverage is used.
- Makes the premiums for uninsured motorist coverage difficult to set, as seen with collision coverage on rented vehicles. If an individual has collision on his/her own personal vehicle, then this coverage passes on to any vehicle that the individual rents. Insurance companies have a difficult time predicting the exposure of rental vehicles and, therefore, it is difficult setting rates for collision coverage.
- Increases statewide insurance rates for all Maryland drivers due to increased claim payments, administrative, and legal costs. Currently, these claim payments and costs are absorbed by the car rental industry as a cost of doing business which is passed along to its customers. A person who rents a car should pay the entire cost of renting including insurance.

- Forces Maryland drivers who do not or cannot afford to rent cars to subsidize the cost of claims for those who do rent cars.
- Does not prevent fraud since the situations with a phantom vehicle would still exist but with claims made to the renter's insurer instead of the rental car company's insurer. Insurance fraud is against both federal and State law. The hypothetical situations are easily resolved through prosecution for fraud by the Insurance Administration or the federal government.

**Proposal E: Allow Liability Coverage (Under Commercial Insurance) to be Negotiated Between a Rental Car Company and a Business Renting Vehicles**

The rental car company industry proposes that a rental car company be allowed to contract with a commercial business customer (that has a commercial insurance policy) as to whether the rental car company or the commercial customer has primary responsibility for liability insurance. Prior to a court case, MVA regulations pertaining to commercial renters allowed a business to provide the insurance if an agreement was made between the business and the rental car company. These regulations were overturned by a 1994 Maryland Court of Special Appeals decision.

**Rationale Provided by Rental Car Companies:**

- Clarifies current practice that allows the owner of a vehicle to be rented for commercial use to only maintain insurance which is "excess" to the policy held by the renter. However, this practice was overturned in a court case.
- Allows two commercial entities to contract among themselves for the allocation of risk.
- Allows the rental car companies to provide national deals with large businesses who already purchase insurance for rented vehicles through a commercial policy that covers rentals nationally. The rental car company could provide a more competitive rental price to the business customer since the rental car company would only provide "excess" coverage.
- Addresses a court case (*Rentals Unlimited, Inc. v. Aetna Casualty & Surety Insurance Company*). The situation occurred where the parties (Rentals Unlimited and Mr. Brown) contractually agreed that Aetna, Brown's insurer, would be responsible for providing primary insurance coverage in the event of any claims. Case law states that the rental car company is primarily responsible for the insurance regardless of an agreement to the contrary.

The insurance industry opposes this proposal. Responses Provided by Insurance Companies:

- Shifts the cost burden of the rental car companies to the commercial passenger insurance companies for the insurance payment of a rented vehicle driven for commercial use. This risk to the insurance company would be impossible to rate and underwrite since the insurance company would not know the rental usage of a commercial policyholder, the type of vehicle a policyholder would rent, and whether the policyholder made an agreement with the rental car company. Insurers would have to spread the cost to all policyholders, forcing insureds that do not rent to subsidize the risk.
- Requires the individual employees to know the specifics of an agreement between the employer and the rental car company. If the agreement only covers business use, any deviation from business use may result in confusion over the coverage of the vehicle.
- May result in unfair treatment against small companies that do not operate nationally or have infrequent rentals. These smaller businesses may not be able to reach an agreement with the rental car companies.
- May be difficult to define which type of commercial entity could enter into agreements with rental car companies. Sole proprietors who frequently rent vehicles may seek similar agreements.
- Makes it unclear as to whether the coverage pertains to collision coverage, as well as liability comprehensive coverage.
- May not be necessary because a rental car company could achieve the desired result by executing a contract with the renter and the renter's insurance company. If all are party to the contract no dispute should arise. Even if a dispute occurs, the rental car company can seek redress from the renter and/or the insurance company who is a party to the contract.
- May compromise the contractual rights of the insurance company of the renter under the policy. Most automobile insurance policies state that the insurance protection provided is excess over any other valid and collectible insurance on non-owned vehicles driven by the policyholder. The premium charged by the insurer is, in part, based upon coverage being excess for non-owned vehicles. A commercial policyholder could, without the knowledge of her or her insurer, bargain away this right and compromise the insurer's contractual rights under the policy.

### **III. Proposals Suggested in the Comments by the Insurance Industry Representative**

The insurance industry suggested their own proposals as part of their comments of the draft report (*See Appendix IV under State Farm's response*).

#### **Repeal the Requirement of Coverage from the Renter's Insurer on Replacement Vehicles**

- Returns Maryland to a policy (not allowing this subsidy for rental car companies) that most states adhere to.
- Eliminates a situation for the private passenger insurer of not being able to rate and underwrite this additional risk.
- Eliminates making all Maryland policyholders, including those who rarely if ever rent a vehicle, pay more for insurance.
- Allows the rental car who is better equipped to assess the frequency and severity of losses from accidents involving these replacement vehicles to use the losses as legitimate expenses.
- Eliminates two unknown risks for the renter's insurer. First, the replacement vehicle being rented is completely unknown to the renter's insurer. Secondly, the renter's insured vehicle is still subject to liability claims since that vehicle may be tested by the repairer or the garage responsible for fixing the vehicle. Thus, the insurer may have two insured vehicles on Maryland highways at the same time.
- Allows competition in the rental car industry as seen by Agency Rent-A-Car. This rental car company has advised that it will provide primary liability coverage for State Farm policyholders throughout the country. Maryland law should not interfere with this form of competition.
- Prevents the rental car companies from selling a form of optional liability coverage and capitalizing on this potentially illusory coverage.

#### **Eliminate the Requirement that the Renter's Insurer Provide Collision Coverage on Rental Vehicles (the rental car company's collision coverage should be primary.)**

- Would clarify the provision that requires notice from the renter's insurer that the "insured will not need any additional coverages or a collision damage

waiver whenever the insured rents a private passenger car for a period of 30 days or less during the term of the policy". This current law fails to indicate whether the renter's insurance is primary, and therefore creates confusion.

- Would prevent those with lower incomes and personal vehicles without collision coverage from being discouraged from renting because they would be subject to the additional cost of a collision damage waiver (CDW). Many individuals are intimidated at the point of rental and agree to CDWs that are essentially illusory. Rental car companies charge \$12/day to cover a deductible that may be as low as \$50.
- Would prevent a subsidization of the business expense of rental car companies, especially by those Maryland policyholders who may never rent a vehicle.
- Permits competition among rental car companies over the coverage of collision claims. Rental car companies or their insurers are better equipped to determine the risk of loss from collision involving rental cars.



## SENATE BILL 604

R4

(6lr2501)

## ENROLLED BILL

— Finance/Economic Matters —

Introduced by Senator Collins

Read and Examined by Proofreaders:

\_\_\_\_\_  
Proofreader.\_\_\_\_\_  
Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this  
 \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ o'clock, \_\_\_\_\_ M.

\_\_\_\_\_  
President.

## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Vehicle Laws – ~~Rented or Leased~~ Replacement Vehicles – Required Security – Task Force**  
 3 **to Examine Liability Insurance on Rental Vehicles**

4 FOR the purpose of ~~clarifying that the Motor Vehicle Administration is prohibited from~~  
 5 ~~registering a leased vehicle until the lessor provides certain proof of insurance to~~  
 6 ~~the Administration;~~ authorizing the owner of a ~~vehicle to be rented~~ certain  
 7 replacement vehicles to satisfy the insurance requirement for a vehicle by  
 8 maintaining a certain excess insurance policy which covers a motor vehicle under  
 9 certain circumstances; requiring the owner of a ~~vehicle to be rented~~ replacement  
 10 vehicle which is covered by a certain excess insurance coverage to provide a certain  
 11 notice on a rental agreement ~~informing the renter~~ that the owner's coverage is  
 12 excess only; making a technical change; defining a certain term; ~~establishing a Task~~  
 13 Force to Examine Liability Insurance on Rental Vehicles; specifying the purpose  
 14 and responsibilities of the Task Force; requiring the Task Force to report to certain  
 15 persons by certain dates; providing for the composition of the Task Force; providing  
 16 for a certain effective date; and generally relating to proof of insurance for the  
 17 registration of certain ~~rented or leased motor vehicles~~ replacement vehicles and to  
 18 the Task Force to Examine Liability Insurance on Rental Vehicles.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

Strike out indicates matter stricken from the bill by amendment or deleted from the law by amendment.

*Italics indicate opposite chamber/conference committee amendments.*

1 BY repealing and reenacting, without amendments,  
2 Article – Transportation  
3 Section 11-143  
4 Annotated Code of Maryland  
5 (1992 Replacement Volume and 1995 Supplement)

6 BY repealing and reenacting, with amendments,  
7 Article – Transportation  
8 Section ~~18-101~~ 17-104 and 18-102  
9 Annotated Code of Maryland  
10 (1992 Replacement Volume and 1995 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
12 MARYLAND, That the Laws of Maryland read as follows:

13 **Article – Transportation**

14 11-143.

15 “Owner”, as used in reference to a vehicle:

- 16 (1) Means a person who has the property in or title to the vehicle;  
17 (2) Includes a person who, subject to a security interest in another person, is  
18 entitled to the use and possession of the vehicle;  
19 (3) Does not include a lessee under a lease not intended as security; and  
20 (4) Includes a lessee under a lease intended as a security.

21 ~~18-101.~~

22 (A) ~~In this title [ , ] THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

23 (B) ~~["rent"] "RENT" means to rent or lease for a period not exceeding 180 days.~~

24 (C) ~~"LEASE" MEANS TO RENT OR LEASE FOR A PERIOD EXCEEDING 180 DAYS.~~

25 17-104.

26 (a) The Administration may not issue or transfer the registration of a motor  
27 vehicle unless the owner or prospective owner of the vehicle furnishes evidence  
28 satisfactory to the Administration that the required security is in effect.

29 (b) The owner of a motor vehicle that is required to be registered in this State  
30 shall maintain the required security for the vehicle during the registration period.

31 (C) (1) IN THIS SUBSECTION, "REPLACEMENT VEHICLE" MEANS A VEHICLE  
32 THAT IS LOANED BY AN AUTO REPAIR FACILITY OR A DEALER, OR THAT AN  
33 INDIVIDUAL RENTS TEMPORARILY, TO USE WHILE A VEHICLE OWNED BY THE  
34 INDIVIDUAL IS NOT IN USE BECAUSE OF LOSS, AS "LOSS" IS DEFINED IN THAT  
35 INDIVIDUAL'S APPLICABLE PRIVATE PASSENGER AUTOMOBILE INSURANCE POLICY  
36 OR BECAUSE OF BREAKDOWN, REPAIR, SERVICE, DAMAGE, OR THEFT OR DAMAGE.



1           (2) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, AN OWNER OF A  
2 REPLACEMENT VEHICLE MAY SATISFY THE REQUIREMENT OF SUBSECTION (A) OF  
3 THIS SECTION BY MAINTAINING AN INSURANCE POLICY THAT IS EXCESS TO ANY  
4 OTHER INSURANCE POLICY AND THAT EXTENDS COVERAGE TO THE OWNER'S  
5 VEHICLE WHILE IT IS USED AS A REPLACEMENT VEHICLE.

6           (3) IF AN OWNER OF A REPLACEMENT VEHICLE PROVIDES COVERAGE  
7 AS PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION, THE AGREEMENT FOR  
8 THE REPLACEMENT VEHICLE TO BE SIGNED BY THE RENTER OR THE INDIVIDUAL  
9 TO WHOM THE VEHICLE IS LOANED SHALL CONTAIN A PROVISION ON THE FACE OF  
10 THE AGREEMENT, IN 12 POINT BOLD TYPE, THAT INFORMS THE INDIVIDUAL THAT  
11 THE COVERAGE ON THE VEHICLE BEING SERVICED OR REPAIRED IS PRIMARY  
12 COVERAGE FOR THE REPLACEMENT VEHICLE AND THE COVERAGE MAINTAINED  
13 BY THE OWNER ON THE REPLACEMENT VEHICLE IS EXCESS ONLY.

14 18-102.

15           (a) (1) The Administration may not register any motor vehicle, trailer, or  
16 semitrailer to be rented ~~OR LEASED~~ until the owner, ~~OR IN THE CASE OF A LEASED~~  
17 ~~VEHICLE, THE LESSOR~~ of the vehicle certifies to the satisfaction of the Administration  
18 that [he] ~~THE OWNER OR LESSOR~~ has security for the vehicle in the same form and  
19 providing for the same minimum benefits as the security required by Title 17 of this  
20 article for motor vehicles.

21           (2) (I) ~~SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE~~  
22 ~~OWNER OF A VEHICLE TO BE RENTED MAY SATISFY THE REQUIREMENT OF~~  
23 ~~PARAGRAPH (1) OF THIS SUBSECTION BY MAINTAINING AN EXCESS INSURANCE~~  
24 ~~POLICY WHICH EXTENDS COVERAGE TO A MOTOR VEHICLE WHILE IT IS RENTED.~~

25                       (II) ~~IF THE OWNER OF A VEHICLE TO BE RENTED PROVIDES~~  
26 ~~COVERAGE AS PROVIDED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE~~  
27 ~~RENTAL AGREEMENT SIGNED BY THE RENTER SHALL CONTAIN A PROVISION ON~~  
28 ~~THE BASE OF THE AGREEMENT, STATED IN BOLD TYPE, INFORMING THE RENTER~~  
29 ~~THAT THE OWNER'S COVERAGE IS EXCESS ONLY IN THIS PARAGRAPH.~~  
30 "REPLACEMENT VEHICLE" MEANS A VEHICLE THAT IS LOANED BY AN AUTO REPAIR  
31 FACILITY OR A DEALER, OR THAT AN INDIVIDUAL RENTS TEMPORARILY, TO USE  
32 WHILE A VEHICLE OWNED BY THE INDIVIDUAL IS NOT IN USE BECAUSE OF LOSS. AS  
33 "LOSS" IS DEFINED IN THAT INDIVIDUAL'S APPLICABLE PRIVATE PASSENGER  
34 AUTOMOBILE INSURANCE POLICY, OR BECAUSE OF BREAKDOWN, REPAIR, SERVICE,  
35 DAMAGE, OR THEFT OR DAMAGE.

36           (II) SUBJECT TO SUBPARAGRAPH (III) OF THIS PARAGRAPH, AN  
37 OWNER OF A REPLACEMENT VEHICLE MAY SATISFY THE REQUIREMENT OF  
38 PARAGRAPH (1) OF THIS SUBSECTION BY MAINTAINING AN INSURANCE POLICY  
39 THAT IS EXCESS TO ANY OTHER INSURANCE POLICY AND THAT EXTENDS  
40 COVERAGE TO THE OWNER'S VEHICLE WHILE IT IS USED AS A REPLACEMENT  
41 VEHICLE.

42           (III) IF AN OWNER OF A REPLACEMENT VEHICLE PROVIDES  
43 COVERAGE AS PROVIDED UNDER SUBPARAGRAPH (II) OF THIS PARAGRAPH, THE  
44 AGREEMENT FOR THE REPLACEMENT VEHICLE TO BE SIGNED BY THE RENTER OR

1 THE INDIVIDUAL TO WHOM THE VEHICLE IS LOANED SHALL CONTAIN A PROVISION  
2 ON THE FACE OF THE AGREEMENT, IN 12 POINT BOLD TYPE, THAT INFORMS THE  
3 INDIVIDUAL THAT THE COVERAGE ON THE VEHICLE BEING SERVICED OR  
4 REPAIRED IS PRIMARY COVERAGE FOR THE REPLACEMENT VEHICLE AND THE  
5 COVERAGE MAINTAINED BY THE OWNER ON THE REPLACEMENT VEHICLE IS  
6 EXCESS ONLY.

7 (b) Notwithstanding any provision of the rental agreement to the contrary, the  
8 security required under this section shall cover the owner of the vehicle and each person  
9 driving or using the vehicle with the permission of the owner ~~for lessee~~.

10 (c) If the Administration finds that the vehicle owner has failed or is unable to  
11 maintain the required security, the Administration shall suspend the registration of the  
12 vehicle.

13 SECTION 2. AND BE IT FURTHER ENACTED, That:

14 (a) There is a Task Force to Examine Liability Insurance on Rental Vehicles.

15 (b) The Task Force consists of the following 7 members:

16 (1) 1 Senator appointed by the President of the Senate;

17 (2) 1 Delegate appointed by the Speaker of the House of Delegates;

18 (3) the Commissioner of the Maryland Insurance Administration or the  
19 Commissioner's designee;

20 (4) the Administrator of the Motor Vehicle Administration or the  
21 Administrator's designee; and

22 (5) 3 members appointed jointly by the President of the Senate and the  
23 Speaker of the House of Delegates as follows:

24 (i) 1 representative of the Maryland Rental Car Coalition;

25 (ii) 1 representative of the motor vehicle liability insurance industry;

26 and

27 (iii) 1 member at large.

28 (c) The President of the Senate and the Speaker of the House of Delegates shall  
29 each appoint a co-chair of the Task Force.

30 (d) Staff support for the Task Force shall be provided by the Department of Fiscal  
31 Services and the Department of Legislative Reference.

32 (e) The purpose and responsibilities of the Task Force are to:

33 (1) review the liability insurance issues, including primary coverage,  
34 involved in the rental of motor vehicles in this State;

35 (2) develop recommendations for methods to:

1                   (i) reduce costs to consumers of the automobile insurance industry  
2 and the rental vehicle industry with respect to duplicative insurance coverages provided  
3 on rental vehicles;

4                   (ii) reduce the confusion to consumers related to the insurance issues  
5 involved in rental vehicle transactions; and

6                   (iii) reduce costs to consumers of rental vehicles or the use of loaner  
7 cars; and

8                   (3) propose legislative, regulatory, and other changes required to implement  
9 the recommendations.

10           (f) On or before December 1, 1996, the Task Force shall submit a report to the  
11 Governor and, in accordance with § 2-1312 of the State Government Article, the General  
12 Assembly.

13           (g) The Task Force shall terminate on January 1, 1997.

14           SECTION 3. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall  
15 take effect July 1, 1996.

16           SECTION 4. AND BE IT FURTHER ENACTED, That, except as provided in  
17 Section 3 of this Act, this Act shall take effect October 1, 1996.

Approved:

\_\_\_\_\_  
Governor.

\_\_\_\_\_  
President of the Senate.

\_\_\_\_\_  
Speaker of the House of Delegates.



THOMAS V. MIKE MILLER, JR.  
PRESIDENT OF THE SENATE



Appendix 2

CASPER R. TAYLOR, JR.  
SPEAKER OF THE HOUSE

**MARYLAND GENERAL ASSEMBLY**  
STATE HOUSE

ANNAPOLIS, MARYLAND 21401-1991

November 19, 1996

TO: Michael J. Wagner, Chairman and Member at Large  
Hon. John C. Astle, representing the Senate of Maryland  
Hon. Charles A. McClenahan, representing the Maryland House of Delegates  
Jean Bienemann, Maryland Insurance Administration  
Ronald L. Freeland, Motor Vehicle Administrator  
Robert Muhs, AVIS, representing the Maryland Rental Car Coalition  
Michael DeLorenzo, Budget Rental Car, local Maryland Rental Car Operator  
Clyde Law, State Farm Insurance, representing the Insurance Industry  
Paul Cheek, GEICO, representing the Insurance Industry

FROM: Thomas V. Mike Miller, Jr., President of the Senate  
Casper R. Taylor, Jr., Speaker of the House

RE: **TASK FORCE TO EXAMINE LIABILITY INSURANCE  
ON RENTAL VEHICLES (S.B. 604 of the 1996 Session)**

We are pleased to appoint you as members of the above-referenced Task Force, effective immediately. Former Senator Michael Wagner has agreed to serve as Chairman of this study, and staff will be provided by our support agencies. They will be in touch with you soon regarding a meeting schedule.

Due to the delay in appointing this Task Force, we are extending the report date to the end of the year. We appreciate your willingness to serve on this panel, and we look forward to hearing the results of your deliberations.

sm

cc: Tami Burt, DFS  
Brian Lee, DLR  
Enrique Martinez-Vidal, DLR





GENERAL ASSEMBLY OF MARYLAND

ANNAPOLIS, MARYLAND 21401

**Task Force to Examine  
Liability Insurance on Rental Vehicles**

**Minutes of Meeting**

**December 3, 1996**

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Meeting Commenced at 1:05 p.m. and Adjourned at 3:00 p.m.

**Members and Staff Attending**

Michael J. Wagner (Chairman and Member at Large); Senator John C. Astle; Delegate Charles, A. McClenahan; Lars Kristiansen and Ron Friedman of the Insurance Administration (for Jean Bienemann); Robert Muhs of AVIS and representing the Maryland Rental Car Coalition; Michael DeLorenzo of Budget Rental Car, a local Maryland rental car operator; Clyde Law of State Farm Insurance; Paul Cheek of GEICO; and Tami Burt and Enrique Martinez-Vidal (Committee Staff)

Chairman Wagner requested that each member of the task force introduce themselves.

**I. Maryland's Auto Insurance Law**

Mr. Leo Doyle, representing the National Association of Independent Insurers, spoke on behalf of the insurance industry. He started by saying that Senate Bill 604 of 1996, as originally introduced, attempted to shift the burden of one party to another for the insurance payment on rented vehicles. He stressed that the insurance coverage should follow the vehicle because it is easier to price and easier to follow the exposure.

**Compulsory Liability Insurance Law**

Mr. Doyle provided some background information saying that the compulsory liability insurance law was enacted around 1973 (he noted that he opposes compulsory insurance because of implementation and administrative problems). Sections 17-103 and 104 of the Transportation Article define the minimum amount of security which is required in order for the Motor Vehicle Administration to issue a registration on a vehicle (\$20,000/\$40,000 bodily injury; \$10,000 property damage; personal injury protection (PIP) \$2,500; and uninsured motorist coverage). An individual can purchase a higher amount.

### **Collision Insurance**

Mr. Doyle discussed the collision damage waiver (CDW) saying that it has been a problem for insurance companies since its enactment around 1989. For collision (property damage to the at-fault vehicle), if the renter accepts the CDW the rental car driver's insurance company is primary. Unlike liability coverage, this coverage is optional. If an individual has collision on his/her own personal vehicle; then this coverage passes on to any vehicle that the individual rents. He noted that insurance companies would like to see the CDW provision repealed because customers are not being well served by it.

Insurance companies have a difficult time predicting the exposure of rental vehicles; therefore, it has been difficult setting rates for collision coverage. The owner of the rental car would like the vehicle returned in the same shape that it was lent out. Therefore, if the individual does not have collision on his/her own personal vehicle, the individual will need to purchase (for a fee) this insurance from the rental car company. Mr. Doyle stressed that the rental car companies should cover this insurance as a cost of doing business. He said he doesn't think people drive differently depending upon which insurance company would pay for an accident.

Lars Kristiansen questioned whether there are any insurance companies which provide this coverage for the rental car companies. If so, he questioned how the insurance company prices the policy for the rental companies. Mr. Doyle responded that if there are insurance companies writing the insurance they must be aware of the claim history. He thought that some companies may use retrospective rating.

Michael DeLorenzo questioned what Mr. Doyle meant by the "exploitation of collision coverage". Mr. Doyle responded that rental companies are charging high rates for collision coverage. Michael DeLorenzo stressed that the rental car industry had nothing to do with the enactment of the CDW. Its enactment stemmed from questionable sales practices in Florida and California. Maryland's Attorney General (Consumer Protection Division) supported the measure.

Senator Astle questioned what happens if the individual renting the vehicle does not have collision coverage on his/her own vehicle and does not purchase the coverage through the rental car company. Mr. Doyle responded that the individual would be held personally responsible and could be sued.



## **General Questions**

Robert Muhs questioned whether the public policy for compulsory insurance is that there is an avenue of redress for consumers. Mr. Doyle responded affirmatively and stated that rates are set by reviewing the frequency and severity of accidents.

Chairman Wagner questioned what would be the worse case scenario. Mr. Doyle responded that Senate Bill 604 (as originally introduced) would be the worse case because the effect could be that more folks would be uninsured. He stressed the need to internalize the cost of insurance and not to shift the costs.

## **II. Maryland's Rental Car Industry (Background)**

Mr. Mike Johansen representing the Maryland Rental Car Coalition and Mr. Dennis McCoy of Alamo spoke on behalf of the rental car industry. Mr. Johansen started by saying that the rental car industry does not want to change the requirement that every vehicle must be covered by insurance. The issue is who is primary with respect to paying claims. Primary is the insurance company where the injured party goes to first for benefits. Secondary is the insurance company where the injured party goes only if the primary carrier has exhausted the limits.

### **Compulsory Liability Insurance Law**

Mr. Johansen reviewed the four components of insurance (liability BI and PD; PIP; and UM). PIP covers the negligent driver for own injuries (not for a third party). UM protects the rental car driver from PD caused by an uninsured motorist; if someone crashes into the rental driver, the driver can go against the person driving the other car; if the other driver is uninsured, then UM kicks in. He stressed that payment of insurance should follow the negligent person.

He stated that every rental company would maintain coverage if the renter does not have insurance, but he stressed that payment of liability claims should go with the person who caused the accident.

Chairman Wagner questioned the following: "If you drive your car and cause an accident, your car insurance company pays; if I drive your car and cause an accident, your car insurance company pays; but (under the rental car industry's proposal) if you drive a rental car company's car and cause an accident, your car insurance company pays." Mr. Johansen stressed the need to have the insurance follow the driver in the case of a rental vehicle.

### **Risk Assessment**

Mr. McCoy stressed that the rental car company has little opportunity to evaluate the driver in a three or four minute transaction. Insurance companies do evaluations of drivers when the driver obtains his/her personal car insurance policy.

Chairman Wagner questioned whether the rental car companies would continue to be interested in the vehicle if the company were not liable. Delegate McClenahan questioned whether drivers cause accidents 100% of the time. Mr. McCoy responded that there are probably some instances where a vehicle may not be safe and contributed to the accident.

Senator Astle questioned the risk associated with the repetitive rental of cars. Mr. Johansen responded that rental car companies are insured in one of two ways: either self-insured (pays for all experience losses) like AVIS and Enterprise (these companies purchase an excess policy for catastrophic losses); or purchase commercial insurance (smaller companies) where the company is experienced rated.

The risk to the rental car company is that the type of driver is unknown (also, where the driver will go is unknown). The risk to the insurance company is that it is unknown who and how often a policy holder will rent (also, it is unknown what type of vehicle they will rent and where they will go).

Chairman Wagner stated that the insurance companies say they do not want to be in the rental car business. He questioned the situation where an employee is a bad driver. Mr. Johansen responded that the employer can check out an employee prior to letting the employee drive the vehicle. He added that it costs \$5 to obtain a driving record check from the MVA. On a \$20 to \$30 rental and in a four minute transaction, driving record checks are not done.

### **Collision Insurance**

Mr. Johansen stated that the CDW is not the issue but it can be used to make a point. Insurance companies do contemplate and factor for potential claims for rental cars when an individual purchases collision on his/her own car. Some piece of the premium must be attributable to collision protection for rental cars. The CDW waiver was enacted because the attorney general did not want the rental car companies in the insurance business; this is an exception to the rule.

Senator Astle questioned whether the need to shift the responsibility is necessary as a national competitive tool. Mr. McCoy responded that it can be; for instance, the company may want to advertise that the rate to rent a car is \$xx; the rental car company may not be able to fully recover

## **Task Force to Examine Liability Insurance on Rental Vehicles**

Minutes - December 3, 1996

Page 5

the required insurance depending upon the insurance laws in each state. He also stated that is unfair for the consumer to pay twice (once for collision coverage under own policy and again if purchased through the rental car company). Mr. Johansen added that any additional claims to the insurance companies from shifting the burden to the individual's policy would not be substantial enough to increase rates.

Lars Kristiansen requested that the rental car companies provide how they arrive at their premium when selling collision coverage - what are the factors used and what is the profit margin. He also asked what happens when a liability claim needs to be paid under the scenario where "I rent a car and cause an accident."

### **Clientele**

Mr. Johansen discussed that the largest piece of the pie of renters (50%) is from the airport. About 30% are replacement vehicles (these are primarily Marylanders) and this was taken care of in SB 604; about 15% are commercial which are primarily Marylanders or Maryland based companies; and about 5% are discretionary (i.e., mini van renters - for vacations). He estimates that 90% of the 50% airport renters are from out-of-state (therefore 45% of all renters are out-of-state).

Senator Astle questioned whether rates would decrease if the overhead is decreased (burden of insurance responsibility is shifted away from the rental car companies) or if the rental car companies will keep the savings as profit to shareholders. Michael DeLorenzo responded that in a free market economy if expenses decrease, prices will follow accordingly. Profit margins are as low as 2 to 4%.

### **PIP**

Mr. Johansen also added that PIP can be waived by the first named insurer; PIP can also be waived on employees (they would be covered under workers' compensation). However, someone who waives on their own policy is not effectually waived when driving in a rental car.

### **Other States**

Chairman Wagner questioned what other states do. Maryland law requires rental car companies to cover out of state drivers. Mr. Johansen responded that in Florida the policy covers the individual and not the vehicle. So when an individual rents a car, he/she is required to provide the name of their agent and/or policy number. The rental car company provides any additional protection. According to Mr. Johansen, about 28 to 30 states make the rental car companies

secondary (five states say one way, five say it the other way, and for the rest the courts have interpreted; sometimes the court makes the parties split the claim). Model states would be Florida, Georgia, Indiana, and Kansas.

Chairman Wagner stated that he suspects the legislature would not go too far one way or another. Therefore, a compromise is desired. He requested information on what the other states have adopted that is working for both industries. He wants to know how Marylanders are being treated in other states. If a Maryland resident rents in another state, the other state's law rules.

### **Commercial Use**

Mr. Johansen mentioned that in a commercial case (Enterprise), the renter agreed to be primary but the courts concluded that the rental car company is primary. MVA's regulations provide that for commercial rentals, the renter's own company is primary.

### **III. Response by Insurance Industry**

Mr. John Ashenfelter of State Farm responded to many of the rental car industry's comments. He said, from a September 1995 study, only seven states have a statute where the renter is primary (includes Florida, Georgia, Indiana, Oklahoma, New York, and Tennessee). Chairman Wagner requested a chart of the findings.

Mr. Ashenfelter stated that it is impossible for the insurance industry to rate by the type of car the individual would rent. Their application for a policy does not ask if the person rents. There is a big difference between a 1988 Accord and a 1996 Minivan. The rates are set according to vehicle and territory, as well as the driver's experience.

Section 541 of Article 48A requires insurance companies to provide collision on a rented vehicle if the policyholder purchases collision on their personal vehicle. The insurance industry wants that provision repealed. It is difficult to rate. Out of state renters are being subsidized. A person in Baltimore City may never rent but a part of that person's premium is related to renting. Therefore, all insured Maryland drivers are subsidizing anyone who rents (including out-of-state renters).

Mr. Ashenfelter clarified that rental car companies are not in the insurance company business; they are either self-insured or have their own insurance. They are not required to be in the insurance business. The insurance industry is concerned that two cars could be on the road but with insurance for only one car. If someone rents a car, that person should pay the entire cost of

Task Force to Examine Liability Insurance on Rental Vehicles

Minutes - December 3, 1996

Page 7

renting which includes insurance. CDW can cause duplication of payments if someone rents a car, purchases collision coverage from the rental car company but has already purchased it through their own policy. In that case, the collision purchased from the rental car company could be used to pay the deductible to their own insurance policy which would be primary. Rental cars are like taxi cabs; taxi cabs are not exempt. Illinois makes rental companies primary. This is the law in most states.

If a Maryland resident rents in Maryland, the renter's insurance company pays the collision and the rental car company pays the liability. This is the same for an out of state renter. The highest risk for the insurance industry is that they don't have the ability to determine who rents cars and if those are risky drivers.

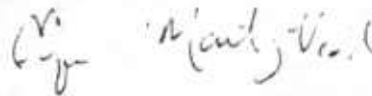
Chairman Wagner questioned whether it is important to track information which indicates that renters do or do not have more accidents. Mr. Ashenfelter responded that they are not aware of those statistics; they only track for collision purposes.

**Next Meeting:** December 17, 1996 - 1:00 p.m.

Respectfully submitted,



Tamela D. Burt, Committee Staff  
Senate Finance Committee  
(Department of Fiscal Services)



Enrique Martinez-Vidal, Committee Staff  
House Economic Matters Committee  
(Department of Legislative Reference)

TDB/EMV/jac





**GENERAL ASSEMBLY OF MARYLAND**

**ANNAPOLIS, MARYLAND 21401**

**Task Force to Examine  
Liability Insurance on Rental Vehicles**

**Minutes of Meeting**

**December 10, 1996**

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Meeting Commenced at 10:20 a.m. and Adjourned at 12:40 p.m.

**Members and Staff Attending**

Michael J. Wagner (Chairman and Member at Large); Senator John C. Astle; Delegate Charles A. McClenahan; Ron Friedman of the Insurance Administration (for Jean Bienemann); Ray Leard of the Motor Vehicle Administration (for Ronald Freeland); Robert Muhs of AVIS and representing the Maryland Rental Car Coalition; Michael DeLorenzo of Budget Rental Car, a local Maryland rental car operator; Clyde Law of State Farm Insurance; Paul Cheek of GEICO; Tami Burt and Enrique Martinez-Vidal (Committee Staff)

**I. Proposal by the Rental Car Company Industry**

Mr. Laurence Levitan, representative of the Rental Car Coalition, opened the rental car company industry's presentation by saying that their proposal continues what the General Assembly passed with collision coverage several years ago. They have two recommendations: (1) the owner/lessor of a motor vehicle that is leased from a period of 180 days or less shall maintain the minimum required security on all vehicles registered in the State but the lessee's (or authorized operator's) insurance, if any is valid and collectible, shall be primary and the security maintained by the lessor shall be secondary up to the minimum levels required by law; and (2) the owner/lessor's minimum required security, to the extent required above, shall cover the owner of the vehicle and each person driving or using the vehicle with the permission of the owner/lessor.

# Task Force to Examine Liability Insurance on Rental Vehicles

Minutes - December 10, 1996

Page 2

Mr. Levitan cited various reasons why rental car companies should be secondary, as follows:

- By providing excess coverage up to the minimum limits, every rental car will be insured -- no injured third parties will be left without adequate remedies.
- By being secondary for required security in the same manner as collision coverage and temporary replacement vehicles, the confusion over Maryland's existing law is reduced.

Other reasons: increases driver responsibility and accountability; reduces duplicate coverage when only one car is on the road; reduces costs in rental industry, making Maryland companies more competitive; allows rental car operators to locate or expand in more risky, urban areas; and exports insurance losses out of State. Because of the large number of out of state renters and replacement vehicles (already covered), the impact on Maryland insureds is minimal.

He also stated reasons why the permissive user law should be restricted, as follows. Rental companies will provide required security on all rental vehicles. Required security, on a secondary basis, should be provided to the renter and other authorized drivers. Rental companies should be able to contractually limit the parties driving the vehicles. If an unauthorized driver causes an accident, the unauthorized driver's insurance, if any, should pay -- then, the renter giving permission to that individual should be responsible (just as if the renter allowed the unauthorized driver to use the renter's owned vehicle). Valet parking attendants, car wash personnel, service repair technicians and other extraordinary drivers are covered under commercial liability policies and coverage by rental companies is not necessary.

Mr. Vince Howley of U-SAVE Auto Rental of America, Inc. described his corporation in Hanover. The company sells franchises which are operated like mom and pop stores. His company does not generally serve the airport market. His company purchases a liability policy through an insurance company. Each rental company is rated by location and experience. The rental car industry's proposal is to shift the loss from the rental companies to the responsible driver.

Mr. Ken MacLeay of National Rental Car Company stated that he deals with issues of coverage (primary vs. secondary). He defends lawsuits against the tortfeasor. He provided the following information. The underlying law is compulsory insurance, meaning that everyone must be covered by insurance. The first thing the plaintiff does is sue the tortfeasor (the individual who caused the injury) -- the driver is served with papers. Then the driver looks to his/her insurance company for defense and indemnification of claims. In a rental car situation, the driver has no one to turn to for defense and indemnification. There is a three year statute of limitation to file. The driver should look to his/her own insurance company. Primary responsibility should be



shifted to the driver to be consistent with Maryland's compulsory law. In one case law, the court split the difference -- the owner of the rental car was liable for 50% of the claim and the driver's carrier was responsible for the remaining 50%. But this is confusing because other case laws resulted in different outcomes. It needs to be made clear that the driver's insurance carrier is responsible. After all, that insurance company has rated the individual and accepted the individual's premiums.

Mr. Mike Johansen, representing the Maryland Rental Car Coalition, stated that insurance companies have experience in providing insurance. Maryland insurance companies pay when a Maryland insured rents in Florida, Georgia, and five other states. The driver's insurance covers the risk when the driver buys a new car, providing coverage to potentially two vehicles on the road if the old vehicle is still on the policy.

Senator Astle questioned whether all rental companies are franchises and where the cars are titled. Mr. Howley responded that perhaps 50% are franchises. Also, Mr. Johansen responded that many cars are titled in other states, as they adjust for fleet size. If someone rents in Maryland, Maryland's insurance law applies even if the rental car is registered/titled in Virginia.

Senator Astle questioned what effect the rental car company industry's proposal would have on the average Maryland citizen. Mr. Levitan responded that Marylanders are already paying in their policy for collision. The proposal means costs will be reduced for rental car companies. Premiums should not go up because over 50% of those who rent are from out of state. The cost is exported to other states and the other states' carriers becomes primary. If a Marylander rents in Florida, the renter's insurance company is primary because in Florida the insurance follows the person and not the vehicle.

Mr. Johansen stated that the maximum amount of losses which would be shifted is \$4.2 million, or approximately .5% of all losses. This amount depends upon the following:

- assuming that the rental company losses resulting from the required coverage is \$20 million statewide (10% of total \$200 million rental revenues);
- 47% of this amount (\$9.4 million) would be shifted to out of state insurance companies whose insureds caused the accidents;
- accordingly, the remaining 53% of losses (\$10.6 million) would shift to Maryland insurance companies for Maryland insureds that caused the accidents; and

- however, of the \$10.6 million, already \$6.4 million is paid by Maryland insurance companies because of SB 604 of 1996 and prior insurance coverage governing temporary replacement rentals. The result is \$4.2 million to be shifted but, in a billion dollar industry, additional losses would account for less than .5%. A portion of these additional losses will be business related and, therefore, borne by businesses with commercial liability policies.

Mr. Johansen also stated that an insurance company can increase premiums, accident surcharge, and generally increase costs on a risky driver. Mr. Levitan stated that rental companies can be more competitive. Mr. MacLeay stated that this could be an economic development argument.

Chairman Wagner stated that if a Virginia driver rents in Virginia and has an accident in Maryland, the costs go back to Virginia. He questioned whether there would be a possibility of others coming in to have their insurance shifted -- such as, government agencies with employees driving government cars, the fire department, etc. They may say they want the employees off the company policy and on the driver's own policy. It could open Pandora's box. Mr. MacLeay responded that could not happen because a company could not disclaim acts of its employees.

Delegate McClenehan questioned what percent of rental business is commercial. Mr. Johansen stated that if an out of state employee of IBM rents in Maryland on a business trip, the Maryland rental car company pays. But IBM has a policy which would cover its employees in Florida. Therefore, corporations doing business in Maryland already have the ability to pay in other states.

Mr. Paul Cheek of Geico questioned how much it costs to rent a car for a day. Mr. Robert Muhs responded between \$25 and \$40. Mr. Cheek questioned whether rates could decrease below \$25. Mr. Johansen responded that the market will take care of rate decreases.

Chairman Wagner questioned whether the collision damage waiver (CDW) is insurance. Mr. Johansen responded that it is only a fee and is not regulated by the insurance administration. Mr. Howley stated that Maryland insurance rates are based on where the rental company is located even if premiums for insurance are sent to a carrier out-of-state. If an Ohio resident has an accident in Maryland, the statistic of the accident for purposes of adjusting premiums goes back to Ohio. Rental car companies do not have the ability to rate potential drivers.

Chairman Wagner stated that there are inequities between the states' laws. Mr. Johansen responded that the rental car companies should always be secondary. It is confusing now especially with the different results in court cases. Mr. Muhs stated that insurance companies have the opportunity to review records, while rental car companies only get a driver's license.

Chairman Wagner stated that costs would be passed on but it would not affect too many citizens. It is difficult to choose between two industries -- a turf war between the rental car company industry and the insurance industry. Rental car companies are competitive now -- the proposal would not change anything -- they will still be competitive -- it's just now they all have the added burden of providing insurance. Mr. Lorenzo responded that insurance premiums for his rental car company would probably not decrease for years even with the proposal. But the insurance laws are responsible for the overall discussion -- why should a rental car company be responsible for someone they do not know? Chairman Wagner stated an example with his banquet hall -- he is responsible for someone who gets hurt.

## **II. Response by Insurance Industry**

Mr. John Ashenfelter of State Farm responded to many of the rental car industry's comments, as follows. Last year, the insurance industry worked to decrease rates for everyone with the Governor's bills. He stated that this discussion is frustrating because there is no question that there would be a shift in cost. Estimates of cost shifts were made by the Rental Car Coalition using unfounded assumptions and no backup data from a company like Universal Underwriters. If someone buys a new car, they are assessed a premium for the coverage on that vehicle. Section 541 of the Insurance Code provides that every insurer providing collision coverage must notify its insured that the insured will not need additional coverages when renting for a period of 30 days or less. Some persons never rent a car and would not be able to find their notice about not having to purchase insurance. Insurance companies don't know the rental car company -- yet the rental car companies have an interest for loss of use and the deductible -- therefore, these companies will want to be a part of the claim resolution. The \$20 million assumption is fast and loose. All states are primary now with a few exceptions. Actuaries base premiums on losses, frequencies, and severity. Losses would be shifted and therefore premiums would increase.

Mr. Leo Doyle of the National Association of Independent Insurers stated that the traditional way of insurance is to provide insurance on the vehicle -- exposure where garaged. He requested that the task force keep the insurance as it is now -- the insurance industry compromised last year with Senate Bill 604 (replacement vehicle).

Mr. Ray Leard of MVA stated that he manages the self-insurance division for MVA. Probably 80% of car rental companies (like Avis, Budget at the airport, etc) are self-insured. They are supposed to submit losses to MVA. If they are self-insured, they are not in it for making a profit on providing insurance. Chairman Wagner questioned who is really hurt -- the 80% self insured or the 20% commercial insured. Mr. Doyle responded that it is the cost of doing business.

Chairman Wagner questioned whether Marylanders are getting an unfair shot in Florida and whether there is a national movement to switch in all states. Mr. Ashenfelter responded that he sees the same battles in West Virginia and Delaware. He suggested the need for more information from either Universal Underwriters or the MVA (self-insured regulator) to see if the \$20 million is accurate.

Mr. Ashenfelter is concerned that duplicate coverage would be provided. Just because someone rents a car and leaves another car at home, it doesn't mean another family member won't drive the at-home car. He also stated that some people will never rent a car-- he questioned why they should face a potential increase in premiums.

Chairman Wagner stated that he understand both sides and why the General Assembly passed the issue onto the task force.

Mr. Muhs agreed with 18 states on the insurance industry's chart. However, he stated that Kansas is secondary -- he was there when it switched. He questioned why the insurance companies cannot ask policyholders (at the time they are asked how many miles they will drive) if they will rent. Mr. Ashenfelter stated that the policyholder may not know if they will rent during the coming policy term. Also, more questions would have to be asked for the insurance company to price it (e.g., what kind of a car would you rent, how many people will drive with you, and where will you be driving). Mr. Ashenfelter stated that the rental car company should know from the losses they pay -- these companies have experience with rental cars.

### **III. Additional Comments by Rental Car Company Industry**

Mr. Dennis McCoy from Alamo stated that insurance companies are better at evaluating a driver. The MVA used to have regulations which were overturned by the courts. These regulations pertained to commercial renters and allowed a business to provide the insurance if an agreement was made between the business and the rental car company. Case law states that the rental car company is primarily responsible for the insurance regardless of an agreement to the contrary. He suggested that the task force, at least, should recommend to allow rental car companies to be secondary in their dealings with commercial transactions. A rental car company should be able to make an agreement with a company like IBM.

Mr. McCoy also stated that under current law the owner of a vehicle can waive PIP. Accordingly, that person cannot receive PIP (\$2,500) when driving in any other vehicle except when driving in a rental vehicle (because the rental car company is the owner and cannot waive PIP). If a driver who caused an accident in a rental car had waived PIP under his/her own policy,

the driver could still collect under the rental car company's policy. Mr. Cheek stated that he was interested in hearing more about the waiving of PIP. Mr. McCoy stated he would be interested in selling PIP if it were waived. Chairman Wagner questioned whether PIP is a big cost. Mr. Leard of MVA stated that about \$200,000 in losses was reported last year by self-insured rental car companies. Mr. Lorenzo stated that claims are often classified at bodily injury when they could be PIP. Chairman Wagner stated that consumers will be even more confused. Mr. Johansen stated that in this case PIP follows the individual, except for rentals.

#### **IV. Additional Comments by Insurance Industry**

Mr. Jeff Rouch of Nationwide stated that costs would be shifted under the proposal. It is not an economic development issue. CDW is already confusing to consumers. Chairman Wagner questioned whether insurance companies would shift the out of state costs to Maryland insureds. Mr. Rouch stated that it could. Nationwide's latest rate filings were for auto rate decreases.

#### **V. Discussion by Task Force**

Chairman Wagner stated that the task force has four choices -- make the rental car companies primary; make the insurance companies primary; compromise; or submit a report of findings with no recommendations.

Mr. Friedman of the Insurance Administration stated that he was concerned with the accuracy of the numbers. He would like to see losses and loss ratios and how the shift would impact premiums. He does not want to take a position at this time. The issue needs study which perhaps the NAII could do.

Mr. Leard of MVA also did not want to take a position. He stated that buses and taxicabs were exempted from PIP because of all the false claims that were being filed. The same thing is happening in rental cars. He feels exempting PIP for rental cars will help the rental car industry.

Mr. Lorenzo (rental car industry) stated that he wants to hold the driver responsible which may result in less accidents. Under current law, the rental car company is primary -- no questions are asked and negligence does not have to be proved. Under a court ruling, Enterprise Co. had to pay claims for an unauthorized driver. He wants to rent cars and not have to provide insurance. He is unable to predict costs to cover insurance because customers lie when they rent.

Mr. Muhs (rental car industry) agreed with Mr. Lorenzo stating that they are not in the business of assessing the risk of drivers.

Mr. Cheek (insurance industry) stated that there is no compelling reason to make a change. There is no evidence of injury. He would have opposed Senate Bill 604 but there is some logic to it. He would be reluctant to take it to the next level. Losses are really unknown -- he questioned whether the shift is \$4 million or \$400 million. He would like to look more at the PIP issue but more information is needed.

Mr. Law (insurance industry) agreed with Mr. Cheek saying that rental companies have the experience. Rental companies are asking for something that no one else is getting.

Delegate McClenehan stated that he is concerned with what would be next. He is not convinced that a cost shift is justified.

Senator Astle stated that he would like to seek a compromise.

Chairman Wagner stated that he will talk to the Chairmen of the Senate Finance Committee and the House Economic Matters Committee. This is a tough issue -- more information is needed. He may call the task force together again. In the meantime, staff is requested to prepare a summary of the positions of each side.

**Next Meeting:** None Scheduled.

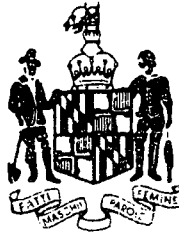
Respectfully submitted,



Tamela D. Burt  
Committee Staff,  
Senate Finance Committee  
(Department of Fiscal Services)



Enrique Martinez-Vidal  
Committee Staff, House  
Economic Matters Committee  
(Department of Legislative Reference)



JOHN C. ASTLE  
30TH LEGISLATIVE DISTRICT  
FINANCE COMMITTEE

SENATE OF MARYLAND

PRESIDENTIAL WING  
JAMES SENATE OFFICE BUILDING  
ANNAPOLIS, MARYLAND 21401-1991  
(410) 841-3578/(301) 858-3578  
FAX: (410) 841-3156

21 February 1997

Ms. Tami Burt  
Department of Fiscal Services  
Legislative Services Building  
Annapolis, MD 21401

Dear Tami,

I am in receipt of the draft report for the Task Force to Examine Liability Insurance on Rental Vehicles.

I reviewed all four proposals and will only support Proposal C - Extend the Waiver of PIP Allowed for Private Passenger Vehicles to Rental Cars.

If you have any questions, please feel free to call me.

Sincerely,

A handwritten signature in black ink, appearing to be "JCA", written over a horizontal line.

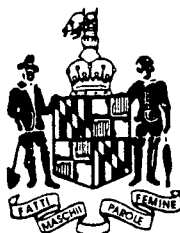
John C. Astle

JCA:mm

CHARLES A. MCCLENAHAN  
38TH LEGISLATIVE DISTRICT/LOWER SHORE  
SOMERSET-WICOMICO-WORCESTER

ANNAPOLIS OFFICE  
412 LOWE HOUSE OFFICE BUILDING  
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ECONOMIC MATTERS COMMITTEE



HOUSE OF DELEGATES  
ANNAPOLIS, MARYLAND 21401-1991

DISTRICT MAILING ADDRESS  
4988 ANNEMESSEX ROAD  
CRISFIELD, MARYLAND 21817  
(410) 548-1444  
(410) 968-1444

February 5, 1997

Tami Burt  
Department of Fiscal Service  
Legislative Services Building  
Annapolis, MD 21401

Dear Tami:

I am in receipt of the draft report for the Task Force to Examine Liability Insurance on Rental Vehicles.

I reviewed all four proposals and will only support Proposal C - Extend the Waiver of PIP Allowed for Private Passenger Vehicles to Rental Cars.

If you have any questions, please feel free to call me.

Sincerely,

Charles McClenahan

CM/dmt





An Employee-Owned Company

**Avis Rent A Car  
System, Inc.**

World Headquarters  
900 Old Country Road  
Garden City, New York 11530

Telephone: (516) 222-3375  
Fax: (516) 222-4101

**ROBERT E. MUHS, ESO.**  
Director  
Governmental Affairs

February 3, 1997

**VIA FACSIMILE**

Honorable Michael Wagner  
Senate Finance Committee  
James Senate Office Building  
Presidential Wing  
Annapolis, MD 21401-1991

**Re: Report of Task Force to Examine Liability Insurance on Rental Vehicles**

Dear Chairman Wagner:

This shall serve as my comments on the Draft Report of the Task Force and the potential legislative recommendations which the Task Force could propose and endorse.

It should come as no surprise that I fully endorse a proposal to shift primary liability coverage to the renter's personal automobile insurance policy. I believe the arguments of the Maryland Rental Car Coalition to be compelling. At the outset, insurance carriers are in the very business of insuring potential risks of harm. This proposal simply would require insurers to fulfill their contractual obligations when the insured operates a rental vehicle. The insurer has the tools available to rate their insureds based on regular review of driving records and accident histories. Moreover, the insurer has an available method of recouping costs through the imposition of accident surcharges. It is my earnest belief that the impact of such proposal on the rates of Maryland insureds will be denimimus--if there is any impact at all. By way of example, in New York, an insurer is required to cover the insured while in a rental car for an additional charge of approximately \$1.50. The insured is also afforded an opportunity to opt out of such coverage.

Notwithstanding the zeal in my support for a complete shift, I also endorse Proposals B, C, D, and E as set forth in the draft report. The limitation of insurance coverage to only permissive users in proposal "B" is a significant step forward. This

Honorable Michael Wagner  
Page 2  
February 3, 1997

proposal would deny rental car coverage when someone not in privity of contract with the owner operates the rental vehicle and causes harm. This proposal also sets forth a hierarchy of coverages to be exhausted prior to reaching the insurance of the rental car owner.

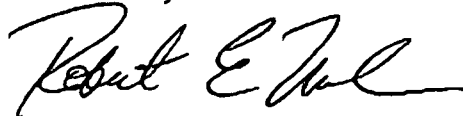
Proposal "C" merely extends existing Maryland law regarding a waiver of Personal Injury Protection ("PIP") to rental cars. If an insured has made the informed decision to waive his/her own PIP coverage on their personal automobile insurance policy, such waiver should logically carry forward and apply to all vehicles used—including rental cars. This same logic applies for Proposal "D".

Regarding Proposal "E," existing law in Maryland does not allow for even bargaining power between a rental car company and potential commercial customers. This proposal would, as it relates to commercial customers, permit the parties to negotiate whose insurance will apply when a rental vehicle is involved. Moreover, the proposal should be clarified to deal with the "primary purpose" for the rental being business use. This would cover those circumstances where the rental vehicle, primarily rented for business, is involved in an accident during a sightseeing excursion or some other personal use.

Accordingly, I endorse and support all five proposals included within the report with my strongest endorsement for a full and complete shift in primary responsibility.

I look forward to speaking with you in the near future.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert E. Hall". The signature is fluid and cursive, with the first name "Robert" and last name "Hall" clearly distinguishable.

REM:im



An Employee-Owned Company

**Avis Rent A Car  
System, Inc.**

World Headquarters  
900 Old Country Road  
Garden City, New York 11530

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**ROBERT E. MUHS, ESQ.**  
Director  
Governmental Affairs

February 3, 1997

**VIA FACSIMILE TRANSMISSION**  
410-841-3650

Tami Burt  
Senate Finance Committee  
James Senate Office Building  
Presidential Wing  
Annapolis, MD 21401-1991

**RE: Comments to Draft Report - Task Force To Examine Liability Insurance  
on Rental Vehicles.**

Dear Tami:

I am submitting my comments on the Draft Report of the Task Force pursuant to your request.

As it relates to the first paragraph, delete the word "company" so the first sentence reads, "...the rental car industry has raised concerns..."

Moreover, the opening paragraph should clarify that the rental car industry does not seek to be relieved of the required security mandates but rather when there are multiple sources of valid insurance available, that the rental car insurance be secondary. In addition, when there is not other available insurance, then and only then, would the rental car coverage be primary.

In the last sentence on page 2, the word "except" should be changed to "exempt."

On page 3, delete "Company" from the bold heading, to now read "Rental Car Industry."

In the next to last paragraph on page 3, "... about 50% of car rentals are at the airport."

In the last paragraph on page 3, change "excess" to "secondary."

On page 4, Replacement Vehicles, should read "...then the person using the loaned vehicle is responsible for the primary insurance coverage through the renters personal automobile policy of insurance."

On page 6, first paragraph, delete company, now reading "The Rental Car industry..."

On page 6, the second bullet paragraph, include the following at the end: "...and would provide primary protection in those instances where the renter has no valid or collectible insurance."

On page 7, third bullet paragraph, insert "free" in last line to read, "...would be in response to the free market."

On page 9, last bullet paragraph, "prevent" not "prevents."

Finally, the draft should qualify that courts in states with statutes similar to Maryland have not found a shift in primary liability to offend public policy (see Missouri).

Should you have any questions, please feel free to contact the undersigned.

Sincerely,

*Robert E. Muka*  
(RM)

REM:im

# State Farm Insurance Companies



January 31, 1997

Clyde Law  
Claims Manager  
800 Oak Street  
Frederick, MD 21709-1000  
Phone: (301) 620-6320  
Fax: (301) 620-6093

Tami Burt  
General Assembly of Maryland  
Annapolis, MD 21401

RE: Comments on Draft Report - Task Force to Examine  
Liability Insurance on Rental Vehicles

Dear Ms. Burt:

I have reviewed the draft report by our Task Force. I will first make some general statements before providing specific comments on the proposals by the rental industry.

The final report should include the two recommendations proposed by the insurance industry. As I recall, the insurance industry recommended that last year's enactment of a subsidy for rental car companies on replacement vehicles should be repealed. In addition, some insurers desired the elimination of the requirement that the renter's insurer provide collision coverage if the renter's personal vehicle had collision coverage. I support these two proposals for the following reasons.

I. Repeal Requirement of Coverage from Renter's Insurer on Replacement Vehicles

The large majority of states do not allow this subsidy for rental car companies.

It has been impossible for the private passenger insurer to rate and underwrite this additional risk. As a result, all Maryland policyholders--including those who rarely, if ever, rent a vehicle--will pay more for their auto insurance so that the rental car companies can avert a legitimate cost of doing business. This subsidy is both unfair and inappropriate.

The rental car company or its insurer is better equipped to assess the frequency and severity of losses from accidents involving these replacement vehicles.

As a result of this law, the renter's insurer underwrites two unknown risks. First, the replacement vehicle being rented is completely unknown to the renter's insurer. Secondly, the renter's insured vehicle is still subject to liability claims since that vehicle may be tested by the repairer or the garage responsible for fixing the vehicle. The risk characteristics of that repairer or shop are completely unknown, but very real, to the renter's insurer. Thus, in the replacement vehicle scenario, the insurer may

have two insured vehicles on the Maryland highways at one time.

Agency Rent-A-Car has advised that it will provide primary liability coverage for State Farm policyholders throughout the country. Obviously, competition can exist in this area of coverage between rental car agencies. Maryland law should not interfere with this form of competition.

In addition, the rental car companies continue to sell a form of "optional" liability coverage in spite of this law. Thus, the rental car companies eliminate a legitimate business cost and capitalize on its elimination by selling potentially illusory coverage. A repeal of the subsidy will halt this unethical practice.

## II. Clarification of Section 541- Collision Coverage on Rental Vehicle

Section 541 illustrates the odd result from an unwise and inappropriate compromise. Subsection (b)(4)(iii) requires notice from the renter's insurer that the "insured will not need any additional coverages or a collision damage waiver whenever the insured rents a private passenger car for a period of 30 days or less during the term of the policy." The section fails to indicate whether the renter's insurance is primary, but it clearly creates confusion. If the rental car company has collision coverage on its vehicles, then to prevent confusion for the individual insured, the rental car company's collision coverage should be primary. In addition, the rental car companies having collision coverage should furnish notice to individual renters that collision coverage on the rental vehicle is primarily provided by the rental car company.

Otherwise, those with lower incomes and personal vehicles without collision coverage are discouraged from renting. In practice today, many individuals remain intimidated at the point of rental and agree to collision damage waivers that are essentially illusory. Testimony indicated that rental car companies in Maryland are essentially charging \$12/day to cover a deductible that may be as low as \$50. If the law explicitly states that the rental car company, if it carries collision coverage, is primary and must provide notice at the point of the rental regarding collision coverage, this unethical and egregious practice will be stopped.

This change again prevents an inappropriate and unfair subsidization of the business of rental car companies, especially by those Maryland policyholders who may never rent a vehicle.

The change permits competition among rental car companies over the coverage of collision claims. Again, rental car companies or their insurers are better equipped to determine the risk of loss from collision involving rental cars.

### III. Rental Car Industry's Proposal A

I oppose this proposal for many of the reasons stated by the insurance industry. In addition, the asserted rationale of the rental car industry is illogical. The 1989 law does not address primary responsibility for collision and has created additional confusion while not prohibiting the sale of collision damage waivers. Insurance companies do not have a special rating provision for collision coverage on rental vehicles by an individual insured/renter. The insurers simply do not have the data necessary for that determination; however, the rental car companies or their insurers do have the data since it is a legitimate business risk and expense. Furthermore, the rental car companies are not in the insurance business unless they choose to be by way of the collision damage waiver and optional liability coverage. Most importantly, it violates a time-proven principle in insurance underwriting; insurance follows the vehicle. Lastly, the argument regarding impact on Maryland insureds lacks any credibility since it is not actuarially based. Oddly enough, the rental car industry fails to indicate how minimal impact on Maryland policyholders does not similarly translate into a minimal impact on the rental car industry and its rental rates. If shifting the burden results in minimal impact on the rental car rates, then why should the subsidy occur at all? This inconsistency remains unexplained.

### IV. Rental Car Industry's Proposal B

I oppose this proposal for many of the reasons stated by the insurance industry. In addition, I have the following comments on the asserted rationale by the rental car industry. Again, this "problem" is a cost of any rental business. If I rent a snow blower and then allow my neighbor to use it without approval from the rental company, if the snow blower is damaged, the rental company can and should seek the appropriate contractual damages. Furthermore, to the degree that the legislature eliminates the basic auto insurance contractual principle that liability coverage is attached to the car, it defeats the purpose and enforcement of the compulsory auto insurance law and disrupts the insurance risk mechanism. It will render compulsory auto insurance wholly ineffective.

### V. Rental Car Industry's Proposal C

I concur with the response of the insurance industry. Personal injury protection coverage is the one coverage which follows the individual. As such, the waiver on the personal auto insurance policy should be extended. This position does not compromise my statements on the insurance industry proposals and the other rental car company proposals. In fact, it underscores the logic of my position and the basic auto insurance principle: insurance, whether involving liability coverage, uninsured motorist coverage, collision or comprehensive coverage, follows the insured vehicle and should not be extended beyond the vehicle. This position is also consistent with the compulsory insurance laws in Maryland.

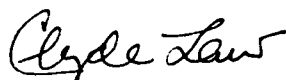
## VI. Rental Car Industry's Proposal D

I do not recall this proposal being specifically presented to the Task Force. Nevertheless, it illustrates the overreaching by the rental car industry. I oppose the proposal for many of the reasons stated by the insurance industry. In addition, the rationale provided by the rental car companies is illogical and lacking in substance. For instance, insurance fraud is against both federal and state law. The hypothetical situations are easily resolved through prosecution for fraud by the Insurance Administration or the federal government. If the rental car industry is, however, willing to propose the elimination of uninsured motorist property damage as a compulsory coverage for everyone, including renters/insureds, then I can support that proposal since the coverage often is unnecessary.

## VII. Rental Car Industry's Proposal E

I oppose this proposal for many of the reasons stated by the insurance industry. In addition, the asserted rationale by the rental car companies is illogical and displays a certain level of unfair discrimination against small businesses and individual renters. Furthermore, it raises a number of questions that the rental car industry has purposefully avoided answering. Will the allegedly "more competitive rental price to the business customer" include small businesses with infrequent rentals? Is this in addition to special corporate rates which national companies already receive from national rental car companies? How will this impact small Maryland rental car companies which may not be able to attract agreements with national companies? Lastly, it seems practically impossible to draft legislation which will limit in an appropriate fashion the parameters of this proposal. Ultimately, the rental car companies will want to shift the burden to all renters via an inconspicuous provision in the rental contract which the rental car companies will assert was known to all renters.

Sincerely,



Clyde Law  
Claims Manager  
State Farm Mutual Automobile Insurance Company

09/0131004



Budget Rent a Car of Montgomery County  
5501 Nicholson Lane  
Rockville, Maryland 20852-3133  
Reservations Dept. (301) 816-6000  
Accounting Dept. (301) 816-6010

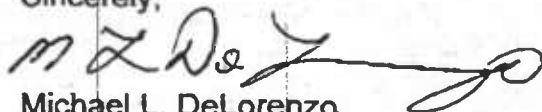
Mr. Michael Wagner, Chairman  
Maryland Task Force to Examine  
Insurance on Rental Vehicles  
General Assembly of Maryland  
Annapolis, Maryland 21401

Mr. Wagner;

While the Private Passenger Insurers present many interesting arguments to the proposals offered by the Car Rental Industry, I am still in favor of all of the proposals offered by the Car Rental Industry. ( Proposals A,B,C,D,E )

All of the arguments offered by the Private Passenger Insurers are attempting to apply the Insurance standards from a traditional Family Owned and Operated vehicle to a non traditional owner of a Rental Vehicle. Rarely, if ever, is a Family Owned and Operated vehicle loaned to the closest of friends, let alone a stranger. The very nature of the car rental business is to provide Transportation to the Public, much the same as a Taxicab, Metrobus, Subway or Train. The beneficial user of the transportation services offered by the Car Rental Industry is the Public. While many of the previously mentioned methods of transportation are operated by Quasi- Government agencies and heavily subsidized by the Public Treasury, the Car Rental Industry has, up to now, been operated as Private Enterprise. The Car Rental industry is required under the current laws to be financially responsible for the actions of all drivers of its vehicles, while by the very nature of our primary transportation system, the car and the highway, it has absolutely no control over those actions. Currently there is no accountability in the insurance system because the drivers of rental cars are never risk rated by their personal or business insurance carriers for their actions while operating rental vehicles. The Proposals offered by the Car Rental Industry would provide a much needed measure of driver accountability into this necessary and affordable transportation system. No other transportation system can serve all residents of the State of Maryland (urban, suburban and rural ) in the way that the Car Rental Industry does.

Sincerely;



Michael L. DeLorenzo

# GEICO

Washington, D.C.

R. P. Cheek  
Vice President - Claims

January 31, 1997

Ms. Tami Burt  
Staff, Task Force to Examine Liability  
Insurance on Rental Vehicles  
P. W. James Senate Office Building  
Annapolis, MD 21401

Dear Ms. Burt,

I have reviewed the draft report and the proposals in your memo of January 27, 1997. The core objective for each proposal is to shift the cost and responsibility from the owner of the vehicle to the lessee. The rationale for opposing such shifts have been submitted and there is no change in our position. There is no compelling reason to amend the law to provide an artificial subsidy to those whose business is renting vehicles.

There is no equity in passing the costs and responsibilities from one industry to another. The people who pay insurance premiums may or may not ever rent a vehicle. For those that don't there should be no potential subsidy for those that do. It is axiomatic that the cost of delivering a product or service will, in large measure, determine the price of that product or service. The rental industry is best able to determine the costs and subsequently price accordingly.

What has been sound public policy in the past should remain so.

Very truly yours,



R. P. Cheek

cga

**MIA INTEROFFICE MEMO**

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**Date:** 2/21/97  
**To:** Tami Burt  
**CC:** Jean Blenemann, Associate Commissioner  
**From:** Rob Friedman, P&C Section *RF*  
**Subject:** Task Force to Examine Liability Insurance on Rental Vehicles

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**Rental Car Industry Proposal:**

The rental car industry representatives made it clear that they wanted to capture the lucrative business at Maryland airports where out-of-state business people and tourists rent cars. This market segment is 45% (\$80 million) of the \$200 million/year Maryland "short term rental" (less than 180 days) market. In order to do so they propose to have the insureds' personal auto liability coverage be primary rather than have the rental company's coverage primary, as it is now. This would lower the companies' expenses and possibly lower rental fees. The rental car companies would then be more competitive with other states that have already have the insured's coverage as primary.

**MIA Recommendations to the Task Force:**

Get more hard data from both sides to support their arguments, such as loss ratios premium effects, and dollar impacts. We do not have enough information to make a decision.

We oppose this proposal by the rental car companies. The rental car companies are trying to shift their costs of doing business to personal auto carriers and the drivers of Maryland. Even if we do not know the dollar impact on personal auto premiums, the MIA must protect Maryland insureds from rate increases.

Any requirements for rental car coverage stated in the Transportation Law should also be addressed in the Insurance Code.

**Proposal A:** Against. It raises insurance rates for all Maryland drivers. Forces all Maryland drivers to subsidize those drivers that rent.

**Proposal B:** Proposal is unclear. We cannot support it if it denies liability coverage to 3rd parties. (Van Horn)

**Proposal C:** Support. It is consistent with law on waived PIP.

**Proposal D:** Against. It raises insurance rates for all Maryland drivers. Forces all Maryland drivers to subsidize those drivers that rent.

**Proposal E:** Proposal is unclear. No position.



MARYLAND DEPARTMENT OF TRANSPORTATION  
MOTOR VEHICLE ADMINISTRATION

David L. Winstead  
Secretary

Ronald L. Freeland  
Administrator

February 4, 1997

**MEMORANDUM**

**TO:** Tami Burt, Staff

**FROM:** Ronald L. Freeland, Administrator  
Motor Vehicle Administration

**SUBJECT:** Comments on Draft Report of Task Force To  
Examine Liability Insurance on Rental Vehicles

*[Handwritten signature of Ronald L. Freeland]*  
Ronald L. Freeland

I agree with the Chairman and the majority of the Task Force that additional review and study of total impact has to take place before acceptance of Proposal A by this State. Also, both the rental industry and the insurance industry should be prepared to back up their arguments with facts and documentation before the liability is shifted. I also suggest input or study of the other states who currently allow such a shift of liability. Therefore, I am against the total shift at this time.

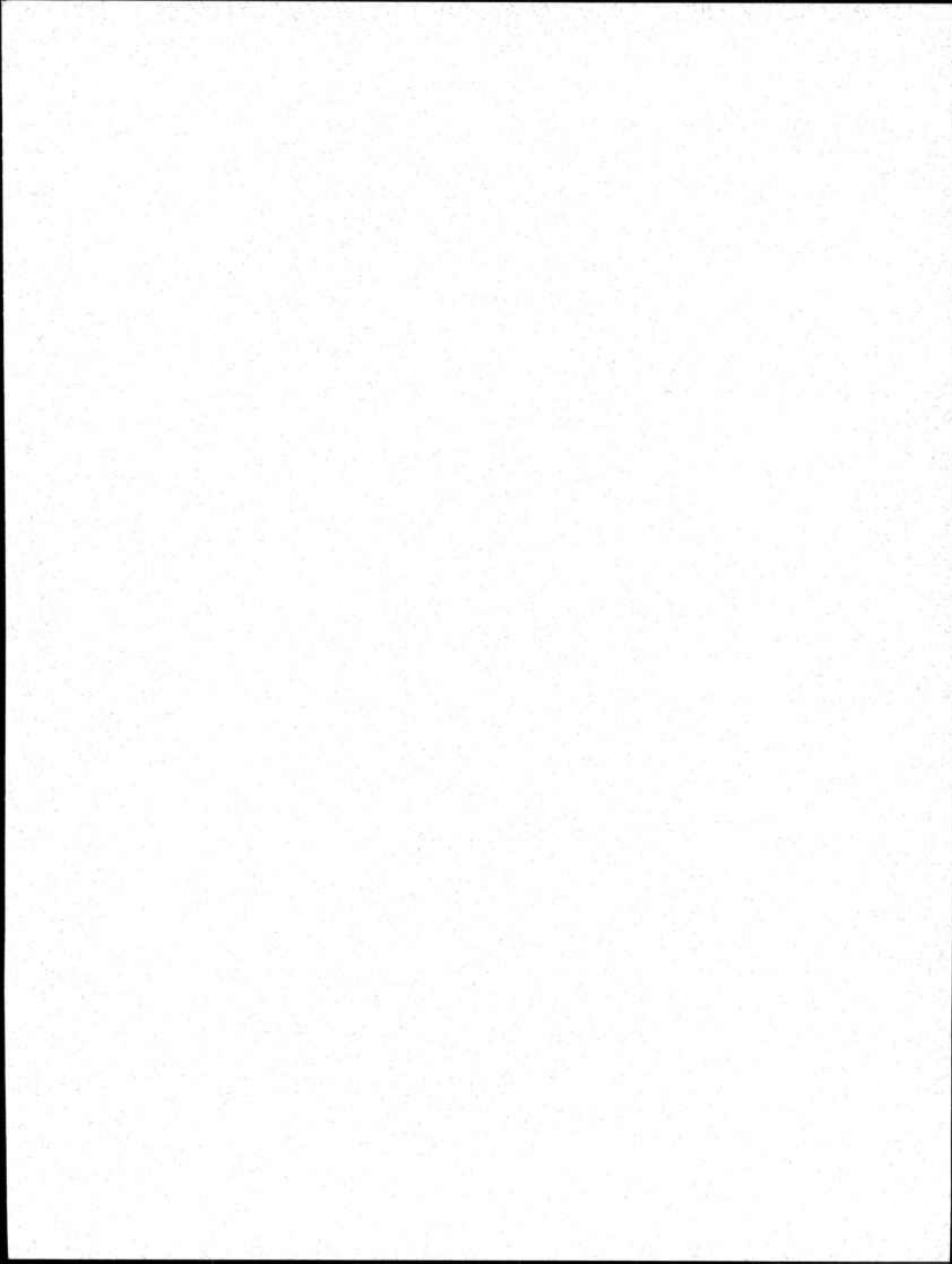
Regarding Proposal B, the car rental industry has a more persuasive position, although there is merit on both sides. I am in favor of this change.

Regarding Proposal C, I would favor the PIP change. Consequently, if the subject has waived such coverage in his own vehicle, it is only fair to carry that waiver into the rental vehicle.

I also feel that Proposal D should be favored with that shift of responsibility to the renter.

Regarding Proposal E, I agree with the rental industry wherein if there is an agreement negotiated between the rental owner and a commercial entity, there could be a shift in primary coverage to the renter as long as the owner of the vehicle would carry excess for the protection of an innocent third party. Between businesses, this is an acceptable practice.

RLF/acb



**RECEIVED**

MAR 6 1997

MARYLAND STATE ARCHIVES